TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 238

THELMA MARTIN, APPELLANT,

vs.

CITY OF STRUTHERS, OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 16, 1942.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 12, 1943.

—4600

[fol. 1] [File endorsement omitted]

[fol. 2] **UNITED STATES SUPREME COURT**

THELMA MARTIN, Appellant,

v.

CITY OF STRUTHERS, OHIO, Appellee

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed May 1, 1942

PETITION FOR APPEAL

Considering herself aggrieved by the final decision of the Supreme Court of Ohio and the judgments of the courts below, in the above entitled cause, the appellant therein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of an ordinance of the City of Struthers, Ohio, known as Section 41 of Chapter 21 of Struthers City Ordinances, reading,

"It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such hand bills, circulars or other advertisements they or any person with them may be distributing."

[fol. 3] which ordinance was passed and approved by the City of Struthers, is drawn in question upon the ground that said ordinance is repugnant to the Fourteenth Amendment to the United States Constitution. The Supreme Court of the State of Ohio is the court of last resort in this cause in the State of Ohio in which a decision could be had and the decision of that court is in favor of the validity of said ordinance.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 USC, sec. 354]), appellant respectfully shows this Court that the

case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 USC, sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Ohio, court of last resort in this cause in the State of Ohio, rendered its decision herein on the 4th day of February, 1942 and by its said decision affirmed the judgment of the Court of Appeals, the Common Pleas Court of Mahoning County, Ohio, which Common Pleas Court affirmed the judgment of conviction of appellant herein. The Memorandum Decision of the said Supreme Court of the State of Ohio has not been officially reported but is of record unofficially in Volume 14 of the Ohio Bar Association Reports at page 735 and appears in the record at page ——. The Memorandum Decision of the Court of Appeals appears in the record at page ——, and is unofficially reported in Volume 14 [fol. 4] of the Ohio Bar Association Reports at page 44.

The order of affirmance by the said Supreme Court of Ohio, entered in the office of the Clerk of said Court on February 4, 1942, became a final judgment on February 4, 1942.

Assignments of Error

Now come appellant in the above cause and files herewith, together with her petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, make the following assignments:

First. The ordinance in question, both on its face and as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom to worship Almighty God, Jehovah, and freedom of conscience and of press, all contrary to Section 1, Fourteenth Amendment to the United States Constitution.

Second. The ordinance in question is unconstitutional and void on its face because repugnant to Section 1, Fourteenth Amendment to the United States Constitution, in that it is unreasonable and arbitrary and makes unlawful

that which is inherently lawful, it deprives persons lawfully on the property of another for a lawful purpose, liberties and privileges secured by the Constitution.

[fol. 5] PRAYER FOR REVERSAL

For and on account of the above errors the appellant, Thelma Martin, prays that the said judgment of the Supreme Court of the State of Ohio, and of the lower courts, hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for her costs.

Hayden C. Covington, Victor F. Schmidt, Attorneys for Appellant.

[fol. 6] [File endorsement omitted]

[fol. 7] UNITED STATES SUPREME COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 1, 1942

Appellant in the above entitled suit and cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of Ohio on the 4th day of February, 1942, and from the judgment of affirmance of the Court of Appeals of Mahoning County, Ohio, in said cause there titled, to wit, City of Struthers, Ohio, Appellee, v. Thelma Martin, Appellant.

It appearing that the appellant in her motions, briefs and assignments filed here and below originally in said cause attacked the ordinance in question on the grounds, as contended by her, that it unreasonably deprives her of freedom to worship Almighty God, freedom of conscience and of [fol. 8] press, and that it is void because discriminatory and unreasonable, all of which contentions were overruled by decisions and judgments of each of the said courts below and by the Supreme Court of the State of Ohio, previously rendered herein.

It appearing that appellant has presented and filed her petition for appeal to the Supreme Court of the United

States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date of said final judgment of the Supreme Court of the State of Ohio, and from said judgment of the Court of Appeals of Mahoning County, Ohio, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Ohio and the said judgment of the Court of Appeals of Mahoning County, Ohio, in aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the Supreme Court of the State of Ohio and of the Court of Appeals shall prepare and certify a transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from date.

[fols. 9–49c] And It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars and appellant having presented an undertaking in the sum of Five Hundred ($500.00) Dollars executed by the National Surety Corporation, it is further ordered that such undertaking be and the same is hereby approved and ordered filed.

Dated: May 1, 1942.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fol. 50] IN SUPREME COURT OF OHIO, JANUARY TERM, 1941

Docket and Journal Entries

Attorneys:

Theodore T. Macejko, City Bank Bldg., Youngstown, Ohio.

E. F. Mooneyham, 1510 First Central Tower, Akron, Ohio.

On Appeal to U. S. Supreme Court:

Hayden C. Covington, 117 Adams St., Brooklyn, N. Y.

Victor F. Schmidt, Rossmoyne, Ohio.

Title of Case:

CITY OF STRUTHERS, OHIO, Plaintiff and Appellee,

vs.

THELMA MARTIN, Defendant and Appellant

Action:

Appeal from the Court of Appeals of Mahoning County.

Motion for an order directing the Court of Appeals of Mahoning County to Certify Its Record.

Memoranda of Pleadings, &c. Filed, Writs Issued, &c.

Dec. 26, 1941. Notice of Appeal and Proof of Service filed.

Dec. 26, 1941. Motion for an Order to Certify Record and Proof of Service filed.

Dec. 26, 1941. Assignments of Error and Brief of Appellant on motion (9) and Proof of Service filed.

Dec. 30, 1941. Court of Appeals Transcript and Original papers filed.

Dec. 30, 1941. Assignments of Error on Appeal as of Right and Proof of Service filed.

Dec. 30, 1941. Cause docketed on Appeal as of Right.

Jan. 26, 1942. Appellee's brief opposing motion and proof of service filed, same as 28975-28976.

[fol. 51] Jan. 26, 1942. Motion by appellee to dismiss appeal as of right, brief in support of motion, & proof of service filed.

Feb. 4, 1942. Motion for an order directing The Court of Appeals of Mahoning County to Certify Its Record. Overruled. J. 36, Page 529.

Feb. 4, 1942. Motion by Appellee to Dismiss Appeal as of Right sustained. J. 36, Page 530.

Feb. 4, 1942. Dismissed. No debatable constitutional question involved. J. 36, Page 534.

Feb. 11, 1942. Certified copy of entry sent clerk.

Feb. 11, 1942. Mandate issued.

Feb. 11, 1942. Original papers sent to clerk. 5/15/42 returned.

May 1, 1942. Petition for Appeal, Statement, Assignments of Error and Prayer for reversal filed.

May 1, 1942. Statement as to jurisdiction filed.

May 1, 1942. Statement of points to be relied upon filed.

May 1, 1942. Notice calling appellee's attention to Paragraph 3 of Rule 12 filed.

May 1, 1942. Order allowing appeal filed.

May 1, 1942. Citation issued.

May 1, 1942. Bond in sum of $500, National Surety Corp. as surety approved and filed.

May 1, 1942. Praecipe for transcript of Record filed.

May 8, 1942. Acknowledgment of service of papers filed.

[fol. 52] May 16, 1942. Motion by appellee to dismiss appeal filed.

June 9, 1942. Application for enlargement of time for completion of transcript filed.

June 9, 1942. Order enlarging time for certifying transcript of Record to United States Supreme Court to July 10, 1942.

July 1, 1942. Citation returned and filed.

JOURNAL ENTRIES

28974.

Wednesday, Feb. 4, 1942. Motion for an order directing the Court of Appeals of Mahoning County to certify its record.

It is ordered by the court that this motion be and the same is hereby overruled. J. 36, Page 529.

28974.

Motion by appellee to dismiss appeal filed as of right.

It is ordered by the Court that this motion be and the same is hereby sustained. J. 36, Page 530.

JUDGMENT

28974.

Appeal from the Court of Appeals of Mahoning County.

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Mahoning County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at $.....

Ordered, That a special mandate be sent the Court of Common Pleas of Mahoning County, to carry this judgment into Execution.

[fol. 53] Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Mahoning County, "for entry." J. 36, Page 534.

[fol. 54] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 55] IN SUPREME COURT OF OHIO

City of Struthers, Appellee, v. Martin, Appellant

City of Struthers, Appellee, v. Rummell, Appellant

City of Struthers, Appellee, v. Willard, Appellant

OPINION—February 4, 1942

Supreme Court—Dismissals—No debatable constitutional question involved—Municipal ordinance—Prohibiting person distributing circulars from summoning inmate of house—Conviction of person distributing religious pamphlet—Section 11, Article I, Constitution—Article I, Amendments, and Section 1, Article XIV, Amendments U. S. Constitution.

(Nos. 28974, 28975 and 28976—Decided February 4, 1942.)

Appeals from the Court of Appeals of Mahoning County.

Mr. T. T. Macejko, for appellee.
Mr. E. F. Mooneyham, for appellants.

It is ordered and adjudged that these appeals as of right be, and the same hereby are, dismissed for the reason that no debatable constitutional question is involved.

Appeals dismissed.

Weygandt, C. J., Turner, Matthias and Zimmerman, JJ., concur.

[fol. 56] IN SUPREME COURT OF OHIO

[Title omitted]

MOTION TO DISMISS APPEAL AS OF RIGHT

Now comes the plaintiff-appellee, the City of Struthers, right filed in the above entitled cases, for the reason that Ohio, and moves the Court to dismiss the appeals as of there is no debatable constitutional question involved in the above cases.

Theodore T. Macejko, Attorney for Plaintiff-Appellee.

[fol. 57] IN SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS OF MAHONING COUNTY, OHIO

[Title omitted]

ASSIGNMENTS OF ERROR

The appellant, for her assignments of error herein, alleges that the judgment of the Court of Appeals entered in the above entitled cause on the 2nd day of December, 1941 is erroneous and prejudicial to her rights, in each of the following respects:

1. Said Court erred in not holding that Section 41, of Chapter 21, Ordinances of the city of Struthers, is inapplicable to the appellant under the facts in this case.

2. Said Court erred in not holding that Section 41 of Chapter 21, Ordinances of the city of Struthers, is invalid as applied to the appellant under the facts in this case.

3. Said Court erred in finding and holding that Section 41 of Chapter 21, Ordinances of the city of Struthers, is [fol. 58] a valid exercise of the police power and does not contravene the constitutional guarantees of the appellant.

4. Said Court erred in failing and refusing to reverse the judgments of the Court of Common Pleas and of the Mayor of the city of Struthers.

E. F. Mooneyham, Attorney for Appellant.

[fol. 59] IN COURT OF APPEALS OF MAHONING COUNTY

No. 2758

[Title omitted]

NOTICE OF APPEAL

The appellant herein, who was appellant in the Court of Common Pleas and defendant in the Mayor's Court, hereby gives notice of appeal to the Supreme Court of Ohio, from the judgment rendered by the Court of Appeals on the 2nd day of December, 1941, affirming the judgments of the Court of Common Pleas and of the Mayor of the City of Struthers, Ohio, finding and adjudging this appellant guilty of violating Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio.

Said appeal is on questions of law and is taken to the Supreme Court:

(a) Upon appeal as of right in a case involving the constitutionality of Section 41 of Chapter 21, Ordinances of the City of Struthers, Ohio, as applied to appellant, and construction of Section 11 of Article I of the Constitution of Ohio and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(b) In a misdemeanor case on condition that a motion to certify be allowed by the Supreme Court.

And notice is hereby given that said motion to certify will be heard by the Supreme Court upon a date to be fixed by

[fols. 60-61] the Clerk of said Court who will notify counsel thereof.

(Signed) E. F. Mooneyham, Attorney for Defendant-Appellant.

The undersigned hereby acknowledges receipt of a copy of the foregoing Notice of Appeal this 20th day of December, 1941.

(Signed) Theodore T. Macejko, Attorney for Plaintiff-Appellant. (Signed) H. H. Hull, Asst. Prosecuting Attorney of Mahoning County, Ohio.

[fol. 62] IN COURT OF APPEALS OF MAHONING COUNTY, OHIO

MEMORANDUM DECISION

"An ordinance making it unlawful for any person distributing handbills, circulars or other advertisements to ring door bells, sound door knockers, or otherwise summon the inmate of any residence to the door for the purpose of receiving such handbill or circular being distributed, is valid, and is applicable to a person who summons a resident to the door, tells the resident that she, the solicitor, is a member of a certain religious group, that some of her group are being detained by the police because of preaching their beliefs, asking the resident to protest to the police against such action, requesting the resident to contribute money to her cause and handing the resident a printed leaflet announcing religious meetings.

City of Struthers v. Martin, No. 28974;
City of Struthers v. Rummell, No. 28975;
City of Struthers v. Willard, No. 28976, G. S. R. 6079.
Appeals as of right and motions to certify record filed."

[fol. 63] IN COURT OF APPEALS OF MAHONING COUNTY

MANDATE

THE STATE OF OHIO,
Mahoning County:

At a term of the Court of Appeals, within and for the County of Mahoning in the State of Ohio, begun and held

before Hon. William M. Carter, Hon. Elmer T. Phillips, Hon. John C. Nichols, Judges, at Youngstown on the 22nd day of September, A. D., 1941, among other proceedings then and there had by and before said Court, as appears by its Journal, were the following, viz.:

No. 2758

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

This matter came on to be heard before The Honorable William M. Carter, Elmer T. Phillips and John C. Nichols, Judges of The Court of Appeals of The Seventh Judicial District, Mahoning County, Ohio, upon an appeal filed by the defendant-appellant, Thelma Martin, upon question of law, and the Court being fully advised in the premises, and after hearing the argument of counsel for the respective parties, and after submission of briefs, finds that the judgment of conviction rendered by the Court of Common Pleas was substantiated by the evidence, and that there is no error in the record or proceedings prejudicial to the rights of the defendant-appellant, and that Section 41 of Chapter 21, Struthers City Ordinances, to-wit:

[fol. 64] "It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such hand bills, circulars or other advertisements they or any person with them may be distributing"

is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.

Wherefore, it is ordered, adjudged and decreed that the judgment of the Court of Common Pleas be and hereby is affirmed and that the costs in the sum of $— be taxed against the defendant-appellant. To all of which findings and judgment the defendant-appellant excepts.

[fol. 65] IN COURT OF APPEALS OF MAHONING COUNTY

No. 2758

[Title omitted]

AMENDED ASSIGNMENT OF ERRORS—Filed February 26, 1941

For her amended assignment of errors herein, the defendant-appellant says that there is error in the proceedings and final judgment of the Common Pleas Court manifest on the face of the record, prejudicial to the rights of the defendant-appellant, in the following particulars, to-wit:

1. The Court erred in holding that Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio, is applicable to the activities of the defendant-appellant as disclosed by the evidence and the record.

2. The Court erred in holding that Section 41 of Chapter 21 of the ordinances of the City of Struthers, Ohio, as applied to the activities of the defendant-appellant as disclosed by the evidence and the record, is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.

3. The Court erred in holding that there is no error in the record of the proceedings of the Mayor's Court prejudicial to the rights of the defendant-appellant.

4. The judgment of affirmance is contrary to law.

5. The Court erred in refusing to reverse the judgment of the Mayor's Court.

[fol. 66] 6. Any and all other errors manifest on the face of the record prejudicial to the rights of the defendant-appellant.

E. F. Mooneyham, Attorney for Defendant-Appellant.

[fol. 67] IN COURT OF APPEALS OF MAHONING COUNTY, OHIO

(Title omitted)

ASSIGNMENT OF ERRORS—Filed January 30, 1941

* * * * * * *

Now comes the Defendant-Appellant and says that, at the January Term, 1941, of the Common Pleas Court of Mahoning County, Ohio, in an action therein pending wherein the Appellant was the Defendant and the Appellee was the Plaintiff, said Court handed down a decision in favor of the Plaintiff-Appellee and against the Defendant-Appellant; and that the Defendant-Appellant is unable to plead further; that a transcript of the docket and Journal Entries and the original pleadings and papers have been filed in this proceeding, and that there was manifest error in said record and proceeding prejudicial to the rights of this Defendant-Appellant in the following respects, to-wit:

1. Irregularity in the proceedings of the Court by which the Defendant-Appellant was prevented from having a fair trial;

2. That the verdict is not sustained by evidence and is contrary to law;

3. For any and all errors manifest upon the face of the record whereby this Defendant-Appellant was not granted a fair trial and for any and all errors manifest upon the face of the record that was prejudicial to the rights of the defendant-Appellant.

[fols. 68-71] 4. Excluding evidence of the Defendant-Appellant manifest to the Defendant-Appellant's case.

5. For any and all errors manifest upon the face of the record.

Respectfully submitted, —— —, Attorney for Defendant-Appellant.

[fol. 72] IN COURT OF COMMON PLEAS OF MAHONING COUNTY, OHIO

Case No. 108455

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

MOTION FOR NEW TRIAL

Now comes the Defendant-Appellant and respectfully moves the court to vacate and set aside the findings of the court heretofore rendered in this cause; to grant a new trial herein for the following reasons, to-wit:

1. Irregularity in the proceedings of the Court by which the defendant-appellant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3, For any and all errors manifest upon the face of the record whereby this defendant-appellant was not granted a fair trial and for any and all errors manifest upon the face of the record that was prejudicial to the rights of the defendant-appellant.

4. Excluding evidence of the defendant-appellant manifest to the defendant-appellant's case.

5. For any and all errors manifest upon the face of the record.

Respectfully submitted (Signed) K. H. Powell, Ralph B. Schwartz, Attorneys for defendant-appellant.

[fol. 73] IN COURT OF COMMON PLEAS OF MAHONING COUNTY, OHIO

Case No. 108455

CITY OF STRUTHERS, OHIO, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

JUDGMENT

This matter came on to be heard before the Hon. Judge Erskine Maiden upon a petition in error filed by defendant-appellant wherein said defendant-appellant requested the Court to set aside the judgment of the Mayor's Court of the City of Struthers, Ohio, for the following reasons:

1. Irregularity in the proceedings of the Court by which the defendant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3. That the judgment of the Court was rendered under passion and prejudice whereby this defendant was prevented from having a fair trial.

4. For any and all errors manifest upon the face of the record whereby this defendant was not granted a fair trial.

5. Excluding evidence of the defendant manifest to the defendants's case.

After being fully advised in the premises, and after the submission of briefs by both of the parties and a transcript of the evidence of the lower court, the Court finds that the proceedings in the Mayor's Court were substantiated by the evidence and that there is no error in the record or proceedings prejudicial to the rights of this appellant and [fol. 74] that Section 41 of Chapter 21 of Struthers City Ordinances, to-wit:

"It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of

receiving such hand bills, circulars or other advertisements they or any person with them may be distributing.''

is a valid exercise of the police power and does not contravene the constitutional guarantees of defendant-appellant.

Wherefore, it is Ordered, Adjudged and Decreed that the judgment of the lower court be and hereby is affirmed and that the costs in the sum of $— be taxed against defendant-appellant.

E. Maiden, Jr., Judge. O. K. K. H. Powell, T. T. Macejko.

Clerk's Notice of Entry of Judgment.

Jan. 28, 1941. Trial to Court. Judgment of lower Court affirmed at costs of Deft. Appellant. See Journal 192A Page 197.

[fol. 75] In Court of Common Pleas of Mahoning County, Ohio

[Title omitted]

Petition in Error

Now comes the defendant-appellant and says that on the 11th day of July, 1940, in the Mayor's Court of the City of Struthers, Ohio, in a criminal action therein pending wherein the appellant was the defendant and the appellee was the plaintiff, said plaintiff-appellee recovered a verdict against this defendant-appellant. That a transcript of the docket or journal entries and the original pleadings and papers have been filed in this proceeding, and that there is error in said record and proceedings prejudicial to the rights of this appellant in the following respects, to-wit:

1. Irregularity in the proceedings of the Court by which the defendant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3. That the judgment of the Court was rendered under passion and prejudice whereby this defendant was prevented from having a *a* fair trial.

[fol. 76] 4. For any and all errors manifest upon the face of the record whereby this defendant was not granted a fair trial.

5. Excluding evidence of the defendant manifest to the defendant's case.

Wherefore, defendant prays that the verdict of the Mayor's Court be set aside, the charges against this defendant be dismissed and that she be released from her bond as placed in the Mayor's Court, and the proceedings below be set aside and held for naught.

(Signed) K. H. Powell, Attorney for Defendant.

PRAECIPE

To the Clerk:

Issue Summons and serve a copy of the foregoing Petition in Error to the Sheriff of Mahoning County to be by him served upon W. A. Strain as Mayor of the City of Struthers, Ohio, defendant in error.

(Signed) K. H. Powell, Attorney for Defendant-Appellant.

[fols. 77-79] BEFORE THE HONORABLE W. A. STRAIN, MAYOR OF THE CITY OF STRUTHERS, OHIO

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant.

NOTICE OF APPEAL

Now comes Thelma Martin, appellant, and defendant in the Mayor's Court of the City of Struthers, Ohio, and hereby gives notice or appeal to the Court of Common Pleas of Mahoning County, Ohio, on questions of law from a verdict by the Mayor's Court of the City of Struthers, Ohio, in the above entitled cause on the 11th day of July, 1940, in favor of the City of Struthers, Ohio, appellee in said Mayor's Court, and against this appellant and defendant in said Mayor's Court.

K. H. Powell, Attorney for Appellant.

Copy of the foregoing Notice of Appeal delivered to counsel for plaintiff-appellee this — day of July, A. D., 1940.

[fol. 80] BEFORE THE HONORABLE W. A. STRAIN, MAYOR OF THE CITY OF STRUTHERS, OHIO

CITY OF STRUTHERS, OHIO, Plaintiff,

vs.

THELMA MARTIN, Defendant

Statement of Exidence

Theodore T. Macejko, Counsel for Plaintiff.
K. H. Powell, Counsel for Defendant.

[fol. 81] The Witness is sworn.

By Mr. Macejko:

Q. Will you state you- full name to the Court?
A. Albert Charles Swartzlander.
Q. Where do you live?
A. 724 Creed Street.
Q. How long have you resided at that Creed Street residence?
A. 14 years.
Q. How old are you?
A. 14 years old.
Q. What grade are you in?
A. 9th.
Q. You are a freshman, are you?
A. Yes, sir.
Q. Are you going to school this summer?
A. Yes, sir.
Q. Albert, in the afternoon of July 7th were you summoned to the door of your home by anyone?
A. Yes, sir.
Q. Was it by the ringing of the door bell or otherwise?
A. By a knock.
Q. Where were you seated?
A. I was sitting in the living room in a chair.
Q. Was it one knock or a series of knocks?
A. One knock.
Q. Can you tell the Court whether or not that person is here now?
A. I am not sure. She had some kind of hat on and glasses.

[fol. 82] Q. What type of hat?

A. A yellow hat with a big feather or——

Q. What, if anything, did she tell you when you came to the door?

A. She asked if my mother or father was at home.

Q. What did you say?

A. I said my mother was home.

Q. What did you do?

A. I called my mother to the door.

Q. Did you stay there with your mother?

A. Yes, sir.

Q. What took place?

A. Well, first she asked my mother if she would call and ask the police station if they would release her friends and then she asked if she would like to contribute to this type of religion.

Q. Did she hand you- mother anything?

A. She handed my mother a little slip of paper. I don't know what it was and my mother took it.

Q. Could you tell the Court what that slip of paper was? Albert, handing you this slip of paper which is marked for identification as "City's Exhibit A" in the Martin case, was it the type of paper that was handed to your mother by Mrs. Martin here?

A. Yes, sir.

Mr. Powell: I object to the last part of the question. [fol. 83] You assume a little too much. You said by Mrs. Martin here. I don't object to the type of paper handed to the mother. I will go along on that, but the defendant has not been identified as that person.

The Court: Sustained.

Q. Did you read the pi-ce of paper she handed to your mother?

A. Yes, sir.

Q. Do you know what color it was?

A. It had orange on it.

Q. If I handed you this, could you tell the Court if the piece of paper was something similar to that?

A. It was something similar.

Q. And where did this take place?

A. At my home.

Q. Where is that?

A. On Creed Street.

Q. In the City of Struthers?
A. Yes.
Q. County of Mahoning?
A. Yes.
Q. State of Ohio?
A. Yes.
Q. What if anything took place after this act?
A. She turned around and walked off the porch and the cruiser car came and they called to her and motioned and waited.
[fol. 84] Q. Did she go into the car?
A. At first she didn't notice them and they called again and she turned around.
Q. Was this directly in front of your home?
A. Yes, sir.
Q. In the meantime, while this particular person was on the porch of your home, did she remove her glasses?
A. No.
Q. Was there anyone or anybody with this woman at your home?
A. No, sir, nobody at our house.
Q. What time was this, Albert?
A. 4:30 or 5:00 o'clock.
Q. Where was mother when you summoned her to the door?
A. In the kitchen.
Q. That is all.

Mr. Powell: That is all. No cross-examination.

The witness is sworn.

By Mr. Macejko:

Q. What is your name?
A. Mrs. Swartzlander.
Q. Where do you reside?
A. 724 Creed Street.
Q. Mrs. Swartzlander, I will ask you whether or not last Sunday afternoon anyone paid you a visit?
A. Yes, sir.
Q. Would you mind tell- the Court by whom?
[fol. 85] A. A woman representing Jehovah's witnesses.
Q. Can you indentify that lady this afternoon?

A. Yes, sir. Although I will say she had on sun glasses, which more or less disguised her, but I can truthfully say that that is the lady right there.

Q. Mrs. Swartzlander, when you came to the door, will you state just what took place if anything?

A. I came to the door and she told me she was representing Jehovah's Witnesses and I told her that I was not interest-. She, at that time, had some booklets in her hand and, when I told her that I was not interested, she handed me a slip together with a circular. At that time, a car pulled up in front of our home. Then she told me that a number of them were in jail and would I call the Chief of Police and ask that their workers might be released. Then she walked off the porch and the officers——

Q. Were the officers directly in front of your home?

A. He called to her as soon as she left my lawn and then he called again. They were by our driveway.

Q. Did you accept any literature she handed to you.

A. I accepted a slip or booklet that she shoved in the door and I couldn't do much more than take it, but I was not interested in the booklet. I don't care to talk to everybody. I believe in the worship of God, but I don't — anybody to tell me how.

Q. Mrs. Swartzlander, handing you what is marked for [fol. 86] identification as "City's Exhibit A" in the Martin case, I will ask you whether or not this, or something similar to this, is the slip handed to you?

A. That is exactly the kind of slip handed to me: "Religion as a World Remedy" and I tore it up.

Q. Did you read it?

A. Just those headlines.

Q. This took place at your home?

A. Yes, sir.

Q. Where is that?

A. 724 Creed Street.

Q. In the City of Struthers?

A. Yes, sir.

Q. County of Mahoning?

A. Yes, sir.

Q. State of Ohio?

A. Yes, sir.

Q. Do you know the officer that arrested this defendant?

A. I know him to see him.

Q. Do you know him by name?
A. His name is Godfrey.
Q. Were there two officers, or one officer?
A. There was one officer at the time and I know him very well to see him.

By Mr. Powell:

Q. How was the woman dressed?
A. She had a green and black st-iped dress and a large [fol. 87] straw hat and sun glasses.
Q. What color was the hat?
A. I believe it was sort of yellow straw.
Q. Did you talk with your son about the description of this woman?
A. No, sir.
Q. Did you talk with your son about what you would testify to before you came down here?
A. No, sir. I did not.
Q. Did you talk to anyone?
A. No, sir.
Q. Did you receive the pamphlet from the woman who was at your door?
A. I did.
Q. You were not interested you told her?
A. That is what I told her.
Q. You read the face of the pamp-let that says "Religion as a World Remedy"?
A. That is all.
Q. You tore it up?
A. Yes, sir.
Q. You also told us that you were not interested for the reason that every person has a right to worship God as he pleases?
A. Absolutely. I don't believe that anyone needs to be sent from door to door to tell us how to worship.
Q. You did tell us that they had a right to worship their God as they please?
[fol. 88] A. Yes.
Q. But you are absolutely and positively sure that this woman is the woman who was at your door?
A. Yes.
Q. No one else but this woman?
A. No.

Q. Did you complain to the police about them being there?
A. No, sir. The police drove up as she left.
Q. Did you enter any complaint?
A. No.
Q. Did you ever complain about any person coming and rapping on your door to hand you literature of any kind?
A. I have never complained to the officers, but I have to others. I get very much disgusted going to the door——
Q. Sure, we all do.
A. And they get just about the same answer from me. I was called to the door by one of these workers quite a while back and he told me that I was doomed to go to hell because I would not let this literature in my home for my children to read.
Q. You did not believe what they told you?
A. Positively not.
Q. Neither do I, but you have no objection if they believe that way, do you?
A. Not so long as they keep it to themselves. That is their belief.
Q. But whatever was said at your home by these people [fol. 89] was always pertaining to what you and I would probably call religion.

Mr. Macejko: I object.
The Court: Overruled.

Q. Well, it is not religion as I see religion.
Q. No, but was it your idea that they thought it was religion. Maybe you and I may not agree with them. I am frank to say to you, Mrs. Swartzlander, that I am not a member of Jehovah's Witnesses. They may think different than I do and I may think different than they do, but I am trying to make this one particular point. They came there and talked about religion to you, didn't they?
A. Absolutely not. Not what I would call religion.
Q. Well, let's take this defendant for a moment. She asked you to call the police, that is right, isn't it?
A. Yes, sir.
Q. And she gave you this little notice?
A. Yes, sir.
Q. Did shey say anything else to you?
A. No, that is all I can remember, excepting that she was representing Jehovah's Witnesses.

Q. And that she was a Jehovah's Witness?

A. Yes, sir. She said she was representing Jehovah's Witnesses and I told her I was not interested.

[fol. 90] Q. For the purpose of refreshing your recollections—lots of times we all have to be refreshed in our recollections, do you recall whether or not this woman said to you, "I am a member of Jehovah's Witnesses—" and then went on a little bit and told you about it?

A. No, sir, not to the best of my knowledge.

Q. That is all.

The Witness is Sworn.

By Mr. Macejko:

Q. What is your name?

A. Landgraft.

Q. What is your occupation?

A. A Policeman.

Q. How long have you been a policeman?

A. About five years.

Q. Officer Landgraft, I will call your attention to Sunday, July 7th, and I will ask you whether or not you had the occasion to make a call in the vicinity of 724 Creed Street?

A. I did.

Q. Will you tell the Court what the nature of that call was?

A. I was cruising around in the car and I got a call over the radio about people ringing door bells and I turned into Creed Street and I found who I was after.

Q. Officer, could you possibly point out in this court room this afternoon the party or the parties that you picked up?

A. The defendant.

[fol. 91] Q. You are positive that this is one of the parties you arrested?

A. Yes, sir.

Q. What did you do after that?

A. She was coming down off the porch and I called to her.

Q. Had you noticed her talking to someone on the porch when you got there?

A. The people was on the porch.

Q. And she was coming down off the steps?
A. Yes.
Q. You motioned her over to the car?
A. I called her and went up to her and told her that she was under arrest.
Q. Did you notice any type of literature?
A. She had some literature.
Q. Was it printed, or what was the nature of it?
A. They were small booklets.
Q. Officer, could you state if you had occasion to handle these in her presence?
A. I took them down to the desk.
Q. When she was booked?
A. When she was booked.
Q. Did you actually fill out the information?
A. The desk man did that.
Q. What was that?
A. Officer Birch.
[fol. 92] Q. Did you handle the pamp-lets?
A. I did.
Q. That is all.

Mr. Powell: Let it be admitted that officer Birch did docket her.

Mr. Macejko: Mr. Powell, after introducing these exhibits, we are about ready to rest.

Mr. Powell: I make a motion at this time that this defendant be discharged for the reason that from the testimony of the witness who has testified that she did give to her a pamphlet calling her attention to a religious meeting, and that the section of the ordinance does not apply to the distribution of religious literature, and cannot apply to the distribution of religious literature, and that it can apply to the distribution of personal or commercial literature.

The Court: Overruled.

The Witness is sworn.

By Mr. Powell:

Q. What is your name?
A. Thelma Martin.
Q. Where do you live?
A. Rogers.
Q. Rogers, Ohio.
A. Yes, sir.

Q. That I believe is South of Youngstown on Route 7?
[fol. 93] A. Yes, sir.

Q. Directing your attention to the 7th day of July, I will ask you whether or not you were arrested in the City of Struthers?

A. If that was Sunday, I was.

Q. Yes, you were docketed and booked in the Struthers Police Department?

A. Yes, sir.

Q. I will ask you if you are a Jehovah's Witness?

A. I am one of Jehovah's Witnesses.

Q. And I will ask you whether or not it is your christian belief that in order to spread the word of God that it is necessary for you to do witness work from house to house and door to door?

Mr. Macejko: Object.
The Court: Sustained.

Q. Counsel now desires to have the witness answer that question for the purpose of the record.

A. That is right because that is the way Jehovah and the apostles did it and the apostle Paul said "I have taught you publicly and from door to door."

Q. Are you an ordained minister of the Gospel?

A. I am.

[fol. 94] Mr. Macejko: I object to all of this proceeding in reference to religion.

Q. And as such, is it your belief that it is necessary for you as a minister to do witness work among the people.

A. It is absolutely necessary because God has so commanded it.

Q. I will ask you whether or not on the 7th day of July you were carrying on your work as an ordained minister in doing witness work in the City of Struthers.

A. Yes.

Q. And I will ask you whether or not you were doing such work when you were at the home of Mrs. Swartzlander.

A. Yes, sir.

Q. Now, tell the Court what you did in order to further your preaching work at the Swartzlander home.

A. Well, I can almost recall word for word what I said.

Q. Start at the sidewalk and go in.

A. I was on the sidewalk and I went on the porch and the door was open and perhaps I did knock on the screen before the boy come.

Q. Did you knock.

A. I expect I did.

Q. Will you say that you did not knock.

A. I said I may have knocked on the screen, but someone met me right at the door. You can't remember always. I do remember that somewhere a boy called his mother, so, [fol. 95] it may be that it was this place. I told this woman that I was a member of Jehovah's Witnesses and some of our members were in jail, together with five children, and that, if she was in favor of freedom and in seeing justice administered at all, I would request that she call the Chief of Police and demand that they be released. And then I offered her the leaflet and told her it was a booklet on religion and that it has some very timely matters in it and she said she was not interested. I had all ready passed the leaflet to her and I went away.

Q. Did she accept the leaflet?

A. She did.

Q. The leaflet is the leaflet that has been marked and shown here?

A. One like it, if not the same one.

Q. And all of this work and all of this conversation on the porch of Mrs. Swartzlander was in furtherance of your preaching the Gospel as you interpret the Bible?

A. Positively.

Q. And the word of God.

A. Yes.

Q. That is all.

Mr. Macejko: No cross-examination. I am introducing "City's Exhibit A."

Mr. Powell:

[fol. 96] MOTION TO DISMISS

I move the Court for the dismissal of the defendant for the reason that the ordinance of the City of Struthers cannot be applicable as against any person in the furtherance of the practice of religion and I read to you from the Constitution of the United States: "Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." In furtherance of that, I desire to call the Court's attention to the case of People vs. Johnson, 191 N. Y. State, Supreme Court, 750, to that part of the Court's finding when it says, "The ordinance within reasonable limits is a proper one." And this is a proper ordinance. I have no object to it and it should be sustained, but no ordinance no matter how worthy its integrity, should be permitted in any way to curtail any of the fundamental rights of citizens. This is the case of State of Idaho vs. H. D. Morris, 155 Pacific, 296. The Court says: "To place upon the statute under consideration the construction asked for by appellant, and to hold that the use of a motion picture machine on Sunday for the purpose to which it was put by the respondent and his associates, in keeping open or operating a motion picture show in violation of the stat-
[fol. 97] ute would be to improperly invoke the police power of the state * * *" Let me explain that. Let us suppose there is a law in the City of Struthers to prevent a motion picture showing. To open that picture show would be in violation of the ordinance no matter whether they let people in free or not because the ordinance says you cannot open a theater and show pictures. Now, let us suppose that I decided to open that picture show on Sunday and show a religious picture. You cannot stop it. Still in the letter of the law, I am violating that ordinance. That is what this case is about, and the Court herein this case says that the letter of the law was violated, but you cannot enforce it as I know that any person in the display of religious material is in the practice of his religion. I go further. "Such a construction would also bring the statute into conflict with Section 4, Article 1, and Section 19, Article 20 of the Constitution, for thereby religious liberty would be denied." The Court——

Mr. Macejko: That applies to public places.

Mr. Powell: It makes no difference.

Mr. Macejko: It is certainly different than in a persons home.

[fol. 98] Mr. Powell: Yes, because it is an unreasonable exercise of police power. Get my point, Your Honor, it is my belief, and I am sincere in my belief, that, if I were

doing what these people were doing, in carrying on my religious work, it would be just the same as we go to church on Sunday. If it my belief of the Bible to go from door to door and spread the word of God, as long as I don't distribute literature that is improper, as long as I don't violate the health laws, or the laws of morality, no law can touch me while I am doing that. I can be ordered off the porch by the individual that is residing there. I am giving the Court what I understand is the interpretation of the laws and I am citing them to the Court. There are cases in the Supreme Courts of Idaho, New York and others. Your ordinance is good if exercised against individuals distributing commercials, but not as against religious literature. Now, these illustrations or unreasonable exercise of power against the fundamental laws of our country, freedom of worship and freedom of speech, are all in point with the cases before this Court. My cases are in all fours with them.

Mr. Macejko: You mean the police have no authority on religious matters.

Mr. Powell: You can't touch them on religion.

[fol. 99] Mr. Macejko: In private homes.

Mr. Powell: You can't touch them on religion. This says "one who rings the door bell or knocks." One comes to my home and she rings the door bell and I say, "Come in and sit down." And she says, "I am a member of Jehovah's Witnesses. I am a Jehovah's Witness" * * *. And I say, "Sit down and lets discuss Jehovah's Witnesses." Is that violating the law?

Mr. Macejko: Suppose you refuse.

Mr. Powell: You answer my question.

Mr. Macejko: Not as long as there is an invitation.

Mr. Powell: They have knocked first. I say you can violate the letter of the law within violating the law itself. I say to you, if I were an individual distributing something personal there would be no question about it. If I am someone passing out literature which is commercial in its nature, there is no question about it. I am now asking the Court for the discharge of the defendant.

The Court: Overruled.

Will the defendant please stand. Do you have anything [fol. 100] to say before I pass judgment.

Mr. Powell: We have nothing to say, Your Honor.

JUDGMENT

The Court: I find you guilty and impose a fine of Ten Dollars ($10.00) and costs.

I do hereby certify that the above and the foregoing is a full, true, and correct transcript of all the testimony introduced, and proceedings had in the taking of the above named hearing, given in the order as herein appears, and as shown by stenographic notes taken by me at said time.

(Signed) Hillery Pearl, Notary Public.

[fol. 101] WARRANT

THE STATE OF OHIO,
Mahoning County, ss:

Before me, W. A. Strain, Mayor of the City of Struthers, Poland Township, said County, personally came John J. Hosa who, being duly sworn according to the law, deposeth, and saith that on or about 7th day of July, 1940, at the County aforesaid: That one Velma Martin did violate City Ordinance, to-wit: "It shall be unlawful for any person distributing hand-bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise call the inmate or inmates of any residence to the door for the purpose of receiving such hand-bills, circulars or advertisements they or any person with them may be distributing", Contrary to City Ordinance, Chapter 21, Section 41, by knocking on the door of one of Mrs. Swartzlander at 724 Creed Street, in the City of Struthers, County of Mahoning, State of Ohio, and did then and there distribute hand bills contrary to said ordinance, contrary to the form of the ordinance in such case made and provided, and against the peace and dignity of the State of Ohio. And further this deponent saith not.

John J. Hosa.

Sworn to and subscribed to before me this 8th day of July, 1940. W. A. Strain, Mayor.

THE STATE OF OHIO,
Mahoning County, ss:

To the Chief of Police of Said City, Greeting:

Whereas, complaint has been made before me, W. A. Strain, Mayor of the City of Struthers, of the County afore-

said, upon the oath of John J. Hosa that Velma Martin, late of the County aforesaid, did on or about the 7th day of July, 1940, at the County aforesaid: That one Velma Martin did violate City Ordinance, to-wit: "It shall be unlawful for any person distributing hand-bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise call the inmate or inmates of any residence to the door for the purpose of receiving such hand-bills, circulars or advertisements, they or any person with them may be distributing", Contrary to City Ordinance, Chapter 21, Section 41, by knocking on the door of one Mrs. Swartzlander at 724 Creed Street, in the City of Struthers, County of Mahoning, State of Ohio, and did then and there distribute hand bills contrary to said ordinance.

These are therefore to command you to take the said Velma Martin if She be found in your County, or if She shall have fled, that you pursue after her into any County in the State, and There take and safely keep, so that you have her body forthwith before me, Mayor of the City of Struthers, to answer to said complaint, and be further dealt with accordingly to law. And you are also required to subpoena the said complainant, and also —— —— to appear and give evidence relative to the subject matter of said complaint, when and where you have said defendant.

Witness my hand and seal this 8th day of July, A. D. 1940.

W. A. Strain. (Seal.)

[Endorsed:] State Warrant. The State of Ohio against Velma Martin, Box 87, Rodgers, Ohio.

[fols. 102-103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed July 16, 1942

Comes now appellant in the above entitled cause and states that the points upon which she intends to rely in this Court in this cause are as follows:

Point 1. The ordinance in question, both on its face and as construed and applied to appellant, is unconstitutional

and void in that it unreasonably and unlawfully deprives appellant of freedom to worship Almighty God, Jehovah, and freedom of conscience and of press, all contrary to Section 1, Fourteenth Amendment to the United States Constitution.

Point 2. The ordinance in question is unconstitutional and void on its face because repugnant to Section 1, Fourteenth Amendment to the United States Constitution, in that it is unreasonable and arbitrary and makes unlawful that which is inherently lawful, it deprives persons lawfully on the property of another for a lawful purpose, liberties and [fol. 105] privileges secured by the Constitution.

Hayden C. Covington, Victor F. Schmidt, Attorneys for Appellant.

[fol. 105a] [File endorsement omitted.]

[fols. 106-107] [Stamp:] Office of the Clerk, Supreme Court, U. S., Feb. 8, 1943

UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed February 8, 1943

To the Clerk of the Supreme Court of the United States:

You will please print each of the documents in the record in the above entitled and numbered case now on file in your office save and except the documents designated below which should not be printed:

1. Stipulation and Acknowledgment.
2. Bond on Appeal.
3. Praecipe for Record.
4. Citation on Appeal.
5. Application for Enlargement of Time to Appeal.
6. Order on Application for Enlargement of Time to Appeal.
7. Praecipe appearing at Record page 61.
8. Praecipe appearing at Record page 69.
9. Notice appearing at Record page 70.
10. Journal Entry appearing at Record page 71.

11. Motion appearing at Record page 75.
12. Motion appearing at Record page 78.
13. Motion appearing at Record page 79.

Dated February 5, 1943.

Hayden C. Covington, Attorney for Appellant.

[fol. 107a] [File endorsement omitted.]

[fol. 108] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—February 1, 1943

Upon reconsideration, the judgment entered herein October 12, 1942, is vacated, the mandate is recalled, and probable jurisdiction is noted.

Endorsed on cover: File No. 46,732. Ohio, Supreme Court. Term No. 238. Thelma Martin, Appellant, vs. City of Struthers, Ohio. Filed July 16, 1942. Term No. 238, O. T., 1942.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 238

THELMA MARTIN,

Appellant,

vs.

CITY OF STRUTHERS, OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

STATEMENT AS TO JURISDICTION.

HAYDEN C. COVINGTON,
VICTOR F. SCHMIDT,
Counsel for Appellant.

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INDEX.

Subject Index.

Table of Cases Cited.

STATUTES CITED.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 238

THELMA MARTIN,

Appellant,

vs.

CITY OF STRUTHERS, OHIO,

Appellee.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Ohio Legislation Drawn in Question.

The ordinance, the constitutionality and validity of which as construed and applied to appellant, here drawn in question is an ordinance of the City of Struthers, Ohio, known as Section 41 of Chapter 21 of Ordinances of the City of Struthers, reading as follows:

> "It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them are distributing."

The Supreme Court of Ohio and the courts below held that the ordinance was not unconstitutional and that it did not deprive appellant of her right of freedom to worship ALMIGHTY GOD, freedom of conscience and of press, contrary to Section 1, Fourteenth Amendment to the United States Constitution. Said courts also held that the ordinance was not unreasonable, arbitrary, discriminatory, and was not in excess of the police power of the city. Accordingly, that court of last resort of the State of Ohio sustained the application of the ordinance to appellant and decided in favor of the validity of the same and held it to be constitutional on its face and as construed and applied.

Timeliness.

The judgment of the Supreme Court of Ohio was rendered and entered February 4, 1942 (R. —). There was no opinion delivered by that court or the courts below. Memorandum decision was filed in Cause No. 28974 of general docket decisions on such date, copy of which memorandum decision is attached hereto and marked as "Appendix A",

which said memorandum opinion is reported in volume 14 of the Ohio Bar Association Reports at page 735. The court of appeals of Mahoning County, Ohio, also filed a memorandum decision on December 2, 1941, which is reported in volume 14 of the Ohio Bar Association Reports at page 44. Journal entry of such judgment is attached hereto and marked as "Appendix B". The judgment of the Supreme Court of Ohio became final on February 4, 1942, the date of its memorandum decision.

This petition for appeal is duly filed and presented within three months from the date of such final judgment and is therefore timely in that it was presented to the Supreme Court of Ohio on May 2, 1942.

Statement of Nature of Case and Rulings of the Court.

The rulings of the Ohio Supreme Court, the Court of Appeals, the Court of Common Pleas and the Mayor's Court of Struthers, are such as to bring this case within the jurisdictional provisions relied on above.

On the afternoon of July 7, 1940, the appellant, one of Jehovah's witnesses, was engaged in preaching the gospel of God's Kingdom by word of mouth and by distribution of literature from house to house, when she knocked at the door of a residence in the city of Struthers and thereby attracted an inmate thereof to the door. Appellant told such person that she was one of Jehovah's witnesses, preaching the Gospel and that some of her associate members were being detained by the city police because of preaching the Gospel and asked the householder to call the police and protest against such action. She offered a pamphlet also, for which a contribution to the cause was requested, all of which requests were declined. The pamphlet offered to the householder calls attention to the Bible to show that the turbulent conditions on the earth today were foretold by

Almighty God centuries ago, and also presents a warning from Jehovah God to all persons of good-will that the time is near at hand when Almighty God shall vindicate His name and His people by the destruction of all persons who support religion, which is not the true worship of Almighty God, and all who support politics and commerce, because each and all of such are the means employed by the Devil to deceive and blind the people to the purposes and laws of Almighty God. The pamphlet shows that such time of trouble, known as "the battle of that great day of God Almighty" at Armageddon, is near at hand, and will be immediately followed by continuous increase of The Theocratic Government in the earth by Jehovah God under Christ Jesus, and which will bring peace, prosperity, happiness and everlasting life unto all persons who willingly obey all laws of that Government, and who give praise and honor to Jehovah God. The appellant thereupon handed the householder a printed leaflet (see Appendix C for copy) announcing and inviting attendance to a public meeting, where a Bible discourse would be given; then left the premises. Briefly stated, this is the evidence upon which said conviction was based.

The record contains no evidence tending to show that appellant was warned away from said premises by placard or otherwise, or that she was guilty of any fraud, or that her conduct was other than peaceable and orderly at all times, or that the leaflet was of a character subversive of the morals of the public or inimical to the democratic form of government or calculated to preach the peace or otherwise interfere with the public welfare.

The undisputed evidence is that appellant knocked on the door of the Swartzlander home (SM:1) at which time the above detailed facts transpired (SM:1-7). After she left the premises, she was arrested by Officer Landgraft along

with several other Jehovah's witnesses who were arrested in other parts of the city (SM:8-10).

Thelma Martin, appellant, testified to the above facts and that she was a duly ordained minister, preaching the Gospel as above outlined (SM:10-13).

The undisputed evidence showed that she did not knock on the door in a loud and boisterous manner, that she was orderly, courteous and peaceable at all times and left the premises immediately when the householder indicated at the door that he was not interested. The undisputed evidence shows that she did not trespass and that she had not been warned not to enter upon the premises by placard or otherwise and that she was not offensive to anyone.

Trial Court Proceedings.

By affidavit and complaint appellant was charged with an alleged violation of the aforesaid ordinance in that she "did ring the doorbell, sound the door knocker or otherwise summon the inmate of the said residence to the door for the purpose of receiving such handbill and pamphlet which she was distributing". The above facts were developed in the evidence before Mayor W. A. Strain at the trial of appellant under such complaint (SM:1-15).

At the close of the evidence, appellant duly presented her motion to dismiss on the grounds that the ordinance was unconstitutional and as construed and applied because it denied and deprived her of her right of freedom of press and freedom to worship Almighty God as an ordained minister in the manner in which she was doing, contrary to the United States Constitution, Fourteenth Amendment, and that the ordinance was void because of the reasons hereinafter set forth (SM:13-15). For such reason, the appellant urged the trial court to acquit her (SM:15-16) which motion was overruled (SM:16) and the court held

the ordinance to be constitutional (SM:16); and thereupon on June 11, 1940, convicted the appellant and found her guilty and imposed a fine of $10.00 and costs (SM:16). Journal entry of the judgment of conviction was duly entered to which appellant excepted (R. —).

Appellant duly filed her motion for a new trial, which was overruled and to which appellant excepted (R. —).

Appeal Proceedings.

In the time and manner required by law, appellant served and filed her Notice of Appeal to the Court of Common Pleas of Mahoning County (R. —). Thereafter appellant filed her Petition in Error with the Court of Common Pleas of Mahoning County, which was docketed as 108455, in which petition in error complaint was duly made as to the ruling of the Mayor's Court of the City of Struthers in holding the ordinance constitutional and convicting appellant (R. —). Thereafter the cause was brought on for hearing in the Court of Common Pleas and the judgment rendered on the 20th day of January 1941, at which time the judge of the Court of Common Pleas filed the following memorandum decision:

> "Hearing: Judgment affirmed at costs of appellant remanded for execution; Exception to defendant-appellant. (The ordinance is a valid exercise of the police power and does not contravene constitutional guarantees.)" (R. —)

Thereupon the Court of Common Pleas entered its judgment affirming the conviction as shown in the Journal Entry (R. —).

Appellant duly filed her motion for new trial, complaining of the ruling of the court, in the manner required by Ohio procedure (R. —). Said motion was overruled by the Common Pleas Court, to which action the appellant ex-

cepted and was allowed by the court the statutory time in which to perfect appeal to the Court of Appeals (R. —).

Thereafter appellant duly gave Notice of Appeal from the judgment rendered by the Court of Common Pleas, which was duly served upon the Clerk and the Attorney for Appellee and duly filed in the Court of Common Pleas (R. —).

Appellant duly filed in the Court of Appeals in the time and manner required by Ohio procedure, her assignments of error, complaining of the rulings of the Mayor's Court and Common Pleas Court in failing to hold the ordinance unconstitutional and void as construed and applied to appellant, (R. —) which said assignments read as follows:

> 1. The court erred in holding that Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio, is applicable to the activities of the defendant-appellant as disclosed by the evidence and the record.
>
> 2. The court erred in holding that Section 41 of Chapter 21 of the ordinances of the City of Struthers, Ohio, as applied to the activities of the defendant-appellant, as disclosed by the evidence and the record, is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.
>
> 3. The court erred in holding that there is no error in the record of the proceedings of the Mayor's Court prejudicial to the rights of the defendant-appellant.
>
> 4. The judgment of affirmance is contrary to law.
>
> 5. The court erred in refusing to reverse the judgment of the Mayor's court. (R. —.)

In the time and manner by law required, appellant served and filed her Notice of Appeal from the Court of Appeals to the Supreme Court of Ohio, which reads in part as follows:

> "The appellant herein, who was appellant in the Court of Common Pleas and defendant in the Mayor's Court, hereby gives notice of appeal to the Supreme

Court of Ohio, from the judgment rendered by the Court of Appeals on the 2nd day of December, 1941, affirming the judgments of the Court of Common Pleas and of the Mayor of the City of Struthers, Ohio, finding and adjudging this appellant guilty of violating Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio.

"Said appeal is on questions of law and is taken to the Supreme Court:

"Upon appeal as of right in a case involving the constitutionality of Section 41 of Chapter 21, Ordinances of the City of Struthers, Ohio, as applied to appellant, and construction of Section 11 of Article I of the Constitution of Ohio and Section 1 of the Fourteenth Amendment to the Constitution of the United States." (R. —.)

Appellant duly filed within the time and manner required by law assignments of error duly attacking the validity of the ordinance on the grounds that it was contrary to the Constitutions of the State of Ohio and the United States.

On February 4, 1942, the Ohio Supreme Court rendered a judgment as shown by the Journal Entries and memorandum decision dismissing the appeal because no debatable constitutional question was involved.

The Ohio Supreme Court, the Court of Appeals of Ohio, the Common Pleas Court and the Mayor's Court of Struthers each duly passed upon each of said Federal questions or assignments attacking the validity of the ordinance and each of said courts held it valid and constitutional, both on its face and as applied and found that the Fourteenth Amendment to the United States Constitution was not violated.

The Ohio Supreme Court sustained the conviction of appellant and affirmed the judgment of the trial court by dismissing the appeal.

In the petition for appeal and the assignments of error

filed with this statement, appellant complains of the judgment of the Ohio Supreme Court for and on account of each of the grounds set forth in their brief filed in said court.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions.

First.

The ordinance in question, both on its face and as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom to worship ALMIGHTY GOD, Jehovah, and freedom of conscience and of press, all contrary to Section 1, Fourteenth Amendment to the United States Constitution.

Second.

The ordinance in question is unconstitutional and void on its face because repugnant to Section 1, Fourteenth Amendment to the United States Constitution, in that it is unreasonable and arbitrary and makes unlawful that which is inherently lawful, it deprives persons lawfully on the property of another for a lawful purpose, liberties and privileges secured by the Constitution.

Discussion of Ordinance in Question and of Federal Questions Presented.

The ordinance in question does not prohibit trespassing. Even a trespasser could not be convicted so long as he did not ring a door bell or knock on a door. The act of calling from house to house is a lawful business and cannot be prohibited. The act of distributing literature from house to house is a right guaranteed by the Constitution and cannot be infringed upon unduly by any law. The act of going from house to house is not a nuisance and does not consti-

tute trespass. *Borchert* v. *City of Ranger* (Texas) *et al.*, 42 F. Supp. 577 (ordinance of City of Ranger); *Widle* v. *Harrison* (Ark.) *et al.*, unreported decree by United States District Court for Western District of Arkansas, January 9, 1941; *Donley* v. *City of Colorado Springs, Colorado,* 40 F. Supp. 15; *Zimmerman* v. *London,* 38 F. Supp. 582; *City of Columbia* (S. C.) v. *Alexander,* 119 S. E. 241; *Real Silk Hosiery Mills* v. *City of Richmond, Calif.,* 298 F. 126; *Ex parte Maynard,* 275 S. W. 1071; *City of Orangeburg* v. *Farmer,* 181 S. C. 143; 186 S. E. 783; *Jewel Tea Co.* v. *Town of Bel Air,* 172 Md. 536; 192 A. 417; *Prior* v. *White,* 180 So. 347; 116 A. L. R. 1176; *White* v. *Town of Culpeper,* 172 Va. 630; 1 S. E. 2d 269; *N. J. Good Humor, Inc.* v. *Bd. of Comm.,* 11 A 2d 113, 114; *City of McAlester* (Okla.) v. *Grand Union Tea Co.,* 98 P. 2d 924; *De Berry* v. *City of La-Grange, Ga.,* 8 S. E. 2d 147; *Jewel Tea Company* v. *City of Geneva, Nebr.,* 291 N. W. 664; *Hague* v. *C. I. O. et al.,* 101 F. 2d 774; 307 U. S. 496.

The ordinance encourages littering and scattering of literature and discourages the lawful and proper distribution of literature, i. e., handing and delivery of same from distributor to recipient. The best and most effective way of distributing pamphlets is at the homes of the people. *Schneider* v. *State* [Town of Irvington], 308 U. S. 147. This ordinance is a prohibition outright and makes a nullity of that right of distribution.

The appellee admits the right to distribute literature but makes unlawful the only lawful and legal means of so distributing it.

The invalidity of the ordinance is manifest in the fact that one can go upon the porch of another and scatter literature about unlawfully and not be prosecuted under the ordinance unless he rang a door bell or knocked at the door. The ordinance is manifestly unlawful.

In the courts below the appellee relied upon the case of *San Francisco News Co.* v. *City of South San Francisco*, 69 F. 2d 879, 886. The ordinance of Struthers is not similar to the one in South San Francisco involved in that case. The Struthers ordinance actually *does forbid manual delivery* of publications by carrier to a member of the household. Therefore the basis for holding the South San Francisco ordinance valid does not apply here. Such is not in point. There the Circuit Court of Appeals said:

> "* * * The ordinance does not forbid the manual delivery of the publication by the carrier to a member of the household; * * *."

Here no claim or intimation is made that appellant *forced* her mesage on anyone. If it can be considered as "forcing", then every United States postman in the country is guilty of 'forcing himself upon others' in their homes and 'invading their privacy'; and such is equally true of every Western Union messenger in the country, where either the postman or the delivery boy must hand the message personally to the householder.

In the absence of any evidence in the record tending to show that the appellant was disorderly, offensive, or a trespasser, it cannot be said that the simple act of summoning to the door and handing the householder the printed leaflet inviting the householder to a meeting constituted a nuisance so as to warrant the conviction under the ordinance. The ordinance is manifestly an invasion of appellant's constitutional rights of freedom of the press.

A Chicago ordinance, for instance, which banned the distribution of handbills except by putting them under doors and in letter boxes and prohibited the ringing of any bell on the premises, was held by the court to be invalid as an unreasonable interference with private rights, in *Chicago* v. *Schultz*, 341 Ill. 208, 173 N. E. 276. The court cited with

approval the case of *People* v. *Armstrong*, 73 Mich. 288, 41 N. W. 275, which had held a handbill ordinance invalid on the ground that it was unreasonable if it included in its prohibition the circulating of an "invitation to a moral and Christian assembly of people gathered together for the public good."

It is obvious that to prohibit appellant from calling the inmate of any residence to the door for the purpose of receiving the printed leaflets is to hamper and restrict materially the distribution, because it leaves no practicable means of contact with the householders at their homes. Without personal contact, there can be no practical way to make certain that the leaflets will ever reach intended recipients who may be willing to receive them; and all opportunity is lost to engage in oral conversation in connection with the distribution.

It is no answer to say that distribution is not materially interfered with because appellant could still leave the leaflets on the porch or elsewhere on the premises without disturbing the occupants. If the ordinance is valid as enforced against appellant, then so would be an ordinance prohibiting distribution by leaving on the porch or elsewhere on the premises, and thus, by piecemeal, all practicable means of distribution at residences could be destroyed.

The ordinance penalizes one who desires and endeavors to distribute or disseminate information the "right way".

There is no question of distribution of commercial advertisement as was involved in the case of *Valentine* v. *Christenson*, 62 S. Ct. 920-922.

This case is within the rule announced and laid down in *Donley* v. *City of Colorado Springs, Colorado, supra*, where the "Green River" ordinance under which Jehovah's witnesses had been convicted was held inapplicable to their

preaching the Gospel and the case of *Green River* v. *Fuller Brush Co.*, 65 F. 2d 112, was clearly distinguished. To the same effect is *Zimmerman* v. *London, Ohio, supra,* which also involved Jehovah's witnesses, and where United States District Judge Underwood said as follows: at page 584 of the opinion:

> "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to *a virtual prohibition* upon such distribution. * * *. Certainly there is no prospect under the ordinance for the 'free and unhampered distribution of pamphlets' as envisioned by the Supreme Court. * * *" [Italics ours.]

The ordinance is not regulatory but is prohibitory. As long as one does not ring on a door bell or knock on a door he is permitted to make a nuisance of himself at all hours of the day or night and at all places.

The ordinance also makes unlawful the ringing of a door bell or knocking on a door, by a person who is invited on the premises by the householder for the purpose of leaving literature containing information and opinion.

The ordinance here under examination, if allowed the construction and application given it by the lower courts, absolutely prohibits the summoning of one to the door of any residence for the purpose of receiving any hand bill, circular or other advertisement, and this without restriction as to time, manner, circumstances, or character of the information contained in the printed matter, and without regard to the willingness or desire of the householder. It forbids even that which the householder permits or invites. It makes no attempt to differentiate between persons who conduct themselves properly and those who do not. Such ordinance is not regulatory, but is preventive and prohibitive, as against an act of the appellant which is in itself in-

nocent, and which is neither a public nuisance nor a trespass.

There is no rational connection between the means employed and the end aimed at by the ordinance. The police power, relied upon by the appellee, has its limitations recognized by this Court, when confronted with the barrier of constitutional protection of the rights of freedom of worship and of press. The principle here contended for is well stated in Freund's work on "The Police Power" (page 133, section 143), where it is said:

> "The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? is it possible to secure the object sought without impairing essential rights and principles? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

The ordinance makes no distinction whatsoever as to one who is on the property as an invitee, or trespasser: It outright and absolutely prohibits the inoffensive and lawful act of ringing the door bell or knocking on the door, regardless of the purpose of the visit. The doctor making a call, or the minister calling on a member of his church would violate the ordinance and subject himself to conviction if he were to knock on the door or ring the door bell announcing his arrival and seeking entrance, even though he were there on request or by permission.

It is said that the ordinance was passed to prevent unnecessary disturbances and *possible* annoyances to householder who may he summoned to the door by the distributor of the literature. Since the homes of the people are necessary and proper places for the distribution of literature (*Schneider* v. *State, supra*), it seems that questions in favor

of sustaining the right to distribute literature and deliver the same to the individual far outweigh the questions advanced in support of the conveniences of the householder in preventing *possible* annoyances. The words of Mr. Justice Roberts in *Schneider* v. *State, supra,* are appropriate here:

> "* * * Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other personal activities,* but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. * * *
>
> "*Frauds* may be denounced as offenses and punished by law. *Trespasses* may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that *considerations of this sort do not empower a municipality to abridge freedom of speech and press.*" (Italics added.)

It is time enough to apply an ordinance of this character when it is found that the literature is for an illegal, improper and wrongful purpose. While it may be doubtfully considered as valid when applied to items of commercial advertisement (*Valentine* v. *Christenson, supra*), yet when applied to the distribution of information and opinion and pamphlets of the nature distributed here, the ordinance immediately becomes unconstitutional.

Placing the construction upon the ordinance as intended so as to confine it exclusively to commercial advertisement would prevent the ordinance from being held unconstitutional, but since the courts below have so construed the ordinance so as to apply to the activity of the appellant, this Court is bound to accept that construction and concede that the ordinance does proscribe the activity of the appellant. This Court is not, however, precluded from

holding that the Federal constitutional rights have been invaded by the ordinance.

The ordinance does not mention "ministers" going from house to house and clearly was not intended to include "ministers", but since it has been construed to include the "ordained minister", here involved, the right to preach the Gospel as guaranteed under the freedom of worship clause of the Constitutions of the United States and the State of Ohio, the Fourteenth Amendment to the United States Constitution has been invaded.

An "ordained minister" of Almighty God, sincerely doing good unto others and attempting to find in the community those who sigh and cry (Ezekiel 9:4) cannot safely carry out his God-given commission to "comfort all that mourn" as he is by Almighty God commanded to do, in calling from house to house. (Isaiah 61:1-3; Mark 16:15; Revelation 22:17.) Manifestly the ordinance was not intended to be applied to the activity of "ordained ministers" or pamphleteers, (*Cincinnati* v. *Mosier*, 61 Ohio App. 81, 14 Ohio Ops. 134, 22 N. E. 2d 418) and when applied as here so as to prohibit distribution of literature of this character in the circumstances revealed in the evidence, it becomes unconstitutional.

Lovell v. *City of Griffin*, 303 U. S. 444;
Schneider v. *State, supra;*
Cantwell v. *Connecticut*, 310 U. S. 296;
Thornhill v. *Alabama*, 310 U. S. 88;
Near v. *Minnesota*, 283 U. S. 697;
Kennedy et al. v. *Moscow et al.*, 39 F. Supp. 26;
State ex rel. Wilson et al. v. *Russell*, 1 So. 2d 569.

It is clear therefore that the Supreme Court of the State of Ohio stumbled into the "pit of error" while attempting to "perform the delicate and difficult task of appraising the substantiality of the reasons advanced" in support of the

ordinance in question. That court did not give proper weight to the reasons advanced by appellant in support of the questions presented.

For the above reasons we submit that the Supreme Court of Ohio has committed fundamental error and ruled directly contrary to applicable decisions of this Court, and has so far departed from the usual and ordinary course and path of constitutional law as to require the Supreme Court of the United States to exercise its power to correct the same in these proceedings.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the Supreme Court of the State of Ohio.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the jurisdictional procedure as to call for this Court's power of supervision to halt the same.

Confidently submitted,

HAYDEN C. COVINGTON,
117 Adams Street,
Brooklyn, New York;
VICTOR F. SCHMIDT,
Rossmoyne, Ohio,
Attorneys for Appellant.

APPENDIX "A".

[A true copy:]

IN THE SUPREME COURT OF OHIO

Appeal from the Court of Appeals of Mahoning County, Ohio.

No. 28974

CITY OF STRUTHERS, Appellee,

v.

THELMA MARTIN, Appellant.

Memorandum Decision [February 4, 1942]

Weygandt, C. J., Turner, Matthias and Zimmerman, JJ., concur.

Dismissed, no debatable constitutional question involved.

APPENDIX "B".

[A true copy:]

THE STATE OF OHIO, MAHONING COUNTY,

IN THE COURT OF APPEALS,

SEVENTH DISTRICT.

No. 2758

CITY OF STRUTHERS, OHIO, Plaintiff-Appellee,

v.

THELMA MARTIN, Defendant-Appellant.

Journal Entry [Filed Dec. 2, 1941]

This matter came on to be heard before the Honorable William M. Carter, Elmer T. Phillips and John C. Nichols, Judges of the Court of Appeals of the Seventh Judicial Dis-

trict, Mahoning County, Ohio, upon an appeal filed by the defendant-appellant, Thelma Martin, upon a question of law and fact, and the Court being fully advised in the premises, and after hearing the arguments of counsel for the respective parties, and after submission of briefs, finds that the judgment of conviction rendered by the Court of Common Pleas was substantiated by the evidence, and that there is no error in the record or proceedings prejudicial to the rights of the defendant-appellant, and that Section 41 of Chapter 21, Struthers City Ordinances, to-wit:

> "It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such hand bills, circulars or other advertisements they or any person with them may be distributing."

is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.

WHEREFORE, it is Ordered, Adjudged and Decreed that the judgment of the Court of Common Pleas be and hereby is affirmed and that the costs in the sum of $ be taxed against the defendant-appellant. To all of which findings and judgment defendant-appellant excepts.

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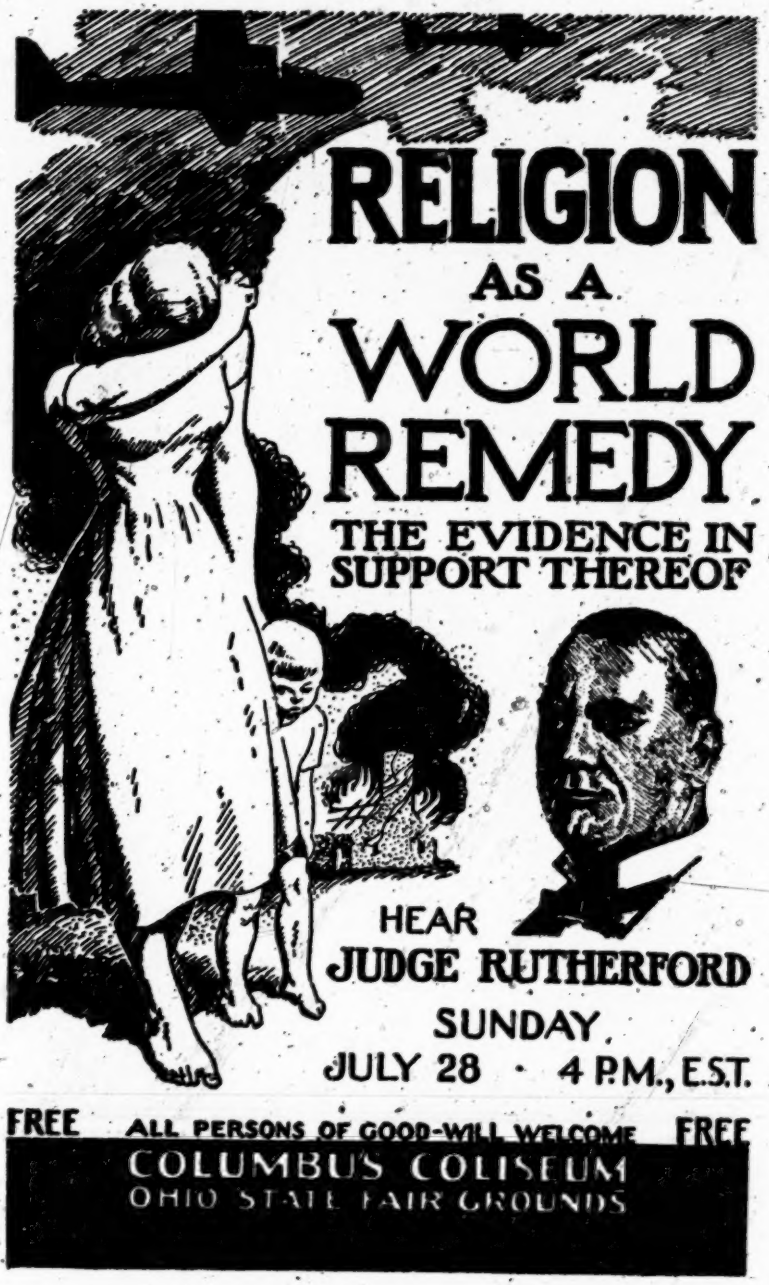
APPENDIX "C".


RELIGION
AS A
WORLD
REMEDY
THE EVIDENCE IN
SUPPORT THEREOF
HEAR
JUDGE RUTHERFORD
SUNDAY
JULY 28 · 4 P.M., E.S.T.
FREE ALL PERSONS OF GOOD-WILL WELCOME FREE
COLUMBUS COLISEUM
OHIO STATE FAIR GROUNDS

1940's

Event of Paramount Importance

TO YOU!

What is it?

The THEOCRATIC CONVENTION of JEHOVAH'S WITNESSES

Five Days - July 24-28 - Thirty Cities

ALL LOVERS OF RIGHTEOUSNESS — WELCOME!

The strange fate threatening all "Christendom" makes it imperative that you COME and HEAR the public address on

RELIGION AS A WORLD REMEDY

The Evidence in Support Thereof

by

Judge Rutherford

at the **COLISEUM** of the
OHIO STATE FAIR GROUNDS
Columbus, Ohio

Sunday, July 28, at 4 p.m., E.S.T.

"He that hath an ear to hear" will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are

Boise, Idaho	Kansas City, Mo.	San Diego, Calif.
Des Moines, Iowa	Lincoln, Nebr.	San Jose, Calif.
Duluth, Minn.	Long Beach, Calif.	Seattle, Wash.
El Paso, Texas	Medford, Oreg.	Sioux Falls, S. Dak.
Fargo, N. Dak.	Pueblo, Colo.	Spokane, Wash.
Fort Worth, Texas	St. Paul, Minn.	Tulsa, Okla.
Great Falls, Mont.	San Antonio, Texas	Honolulu, T. H.

For detailed information concerning these conventions write
WATCHTOWER CONVENTION COMMITTEE
117 ADAMS ST., BROOKLYN, N. Y.

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UNITED STATES SUPREME COURT

OCTOBER TERM 1942

No. 238

★

THELMA MARTIN
Appellant

v.

CITY OF STRUTHERS, OHIO
Appellee

★

APPEAL FROM THE SUPREME COURT OF OHIO

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
VICTOR F. SCHMIDT
Attorneys for Appellant

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INDEX

SUBJECT INDEX

SUBJECT INDEX

CASES CITED

CASES CITED

CASES CITED

CASES CITED

STATUTES CITED

MISCELLANEOUS CITATIONS

UNITED STATES SUPREME COURT

OCTOBER TERM 1942

No. 238

★

THELMA MARTIN
Appellant

v.

CITY OF STRUTHERS, OHIO
Appellee

★

APPEAL FROM THE SUPREME COURT OF OHIO

APPELLANT'S BRIEF

Opinions Below

There was no opinion written by the Supreme Court of Ohio. Memorandum dismissing the appeal is reported in —— Ohio ——, and 40 N. E. 2d 154 and also in 14 Ohio Bar Association Reports 735. There was no opinion written by the Court of Appeals of Ohio, but Memorandum thereof appears in —— Ohio —— and 14 Ohio Bar Association Reports 44. The Common Pleas Court did not write an opinion nor did the Mayor's Court of Struthers, Ohio.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 400, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of Ohio was rendered and entered on February 4, 1942. (R. 7-8) The petition for appeal was duly filed, presented and allowed within three months from the date of such final judgment by the Supreme Court of Ohio and is therefore timely. The order allowing appeal was signed by the Chief Justice on May 2, 1942.

The Statute

The legislation, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Struthers, Ohio, known as Section 41 of Chapter 21 of Ordinances of the City of Struthers, reading as follows:

> "It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them are distributing." R. 1.

Statement

On Sunday, July 7, 1940, the appellant and a number of other of Jehovah's witnesses visited the city of Struthers, Ohio, for the purpose of preaching the gospel from house to house in the distribution of Bible literature. (R. 26-27) After they worked in the city for a short time, the police received a number of calls that people were going about the town knocking on doors and ringing door bells. (R. 24) Several were arrested, including five children. Appellant learned of these arrests as she was calling from house to house. (R. 21) Appellant came to the Swartzlander home in the city and knocked on the screen door (R. 27) and Albert Charles Swartzlander, the son, aged 14, a freshman in high school, came to the door. Appellant asked to speak to his mother, Mrs. Swartzlander, whom the son then called and who came to the door. (R. 19) Appellant had some booklets and other literature in her hand which she offered to leave, but when Mrs. Swartzlander stated that she was not interested, the appellant did not persist in requesting her to take the literature, but then told her that a number of Jehovah's witnesses, her companions, had been arrested and were being detained by the city police because of preaching the gospel from house to house and that since such persons, including five children, had not violated any law, if she was in favor of freedom and in seeing justice administered to all, she should call the chief of police and demand that Jehovah's witnesses be released. Appellant then handed Mrs. Swartzlander a leaflet (City's Exhibit "A") and told her that it was on the subject of religion and had some very timely matters that she would be interested in. (R. 21) The leaflet reads as follows:

"RELIGION as a WORLD REMEDY, The Evidence in Support Thereof. Hear JUDGE RUTHERFORD, Sunday, July 28, 4 P. M., E.S.T. FREE, All Persons of Good-will Welcome, FREE. Columbus Coliseum, Ohio State Fair Grounds. [on one side].

"1940's Event of Paramount Importance TO YOU! What is it? The THEOCRATIC CONVENTION of JEHOVAH'S WITNESSES. Five Days - July 24-28 - Thirty Cities. All Lovers of Righteousness - Welcome! The strange fate threatening all "Christendom" makes it imperative that you COME and HEAR the public address on RELIGION AS A WORLD REMEDY, The Evidence in Support Thereof, by Judge Rutherford at the COLISEUM of the OHIO STATE FAIR GROUNDS, Columbus, Ohio, Sunday, July 28, at 4 p. m., E.S.T. "He that hath an ear to hear" will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are [21 cities listed]. For detailed information concerning these conventions write WATCHTOWER CONVENTION COMMITTEE, 117 Adams St., Brooklyn, N. Y." [on the other side] R. 21.

After appellant had passed the leaflet to Mrs. Swartzlander, she was advised by Mrs. Swartzlander that she was not interested in it. Since Mrs. Swartzlander had the leaflet, appellant turned and went away. R. 27.

Mrs. Swartzlander tore up the leaflet and threw it away. (R. 22) Appellant walked off the porch and down to the sidewalk as a police cruiser car drove up

and stopped. The officer, Landgraft, got out of the car and called to appellant and motioned for her to come over to the police car and got out and approached appellant and told her she was under arrest. (R. 25) She was taken to the station and charged with violation of the foregoing ordinance. (R. 25) Several other of Jehovah's witnesses were arrested in other parts of the city and charged and prosecuted for alleged violation of the foregoing ordinance. R. 21, 27.

History of Proceedings and Federal Questions Raised Below

MAYOR'S COURT PROCEEDINGS

Appellant was charged by complaint filed in the Mayor's Court of the City of Struthers with an alleged violation of the ordinance. (R. 30-31) Among other things it was charged that appellant "did ring the doorbell, sound the door knocker or otherwise summon the inmate of the said residence to the door for the purpose of receiving such handbill and pamphlet which she was distributing". R. 31.

At the close of the evidence, appellant duly presented her motion to dismiss on the grounds that the ordinance was unconstitutional as construed and applied because it denied and deprived her of her rights of freedom of press and freedom to worship Almighty God as an ordained minister in the manner in which she was doing, contrary to the United States Constitution, Fourteenth Amendment, and that the ordinance was void because of the reasons hereinafter set forth. (R. 27-28) For such reason, appellant urged the trial

court to acquit her (R, 27-28) which motion was overruled (R. 29) and the court held the ordinance to be constitutional. (R. 29-30) Thereupon on July 11, 1940 appellant was convicted and found guilty and a fine imposed of $10.00 and costs. (R. 30) Journal entry of the judgment of conviction was duly entered to which appellant excepted. (R. 30) Appellant duly filed her motion for a new trial, which was overruled and to which appellant excepted. R. 14.

COMMON PLEAS COURT PROCEEDINGS

In the time and manner required by law, appellant served and filed her Notice of Appeal to the Court of Common Pleas of Mahoning County. (R. 17) Thereafter appellant filed her Petition in Error with the Court of Common Pleas of Mahoning County, which was docketed as 108455, in which petition in error complaint was duly made as to the ruling of the Mayor's Court of the City of Struthers in holding the ordinance constitutional and convicting appellant. (R. 16) Thereafter the cause was brought on for hearing in the Court of Common Pleas and the judgment rendered on January 20, 1941, at which time the judge filed the following memorandum decision:

> "Hearing: Judgment affirmed at costs of appellant remanded for execution; Exception to defendant-appellant. (The ordinance is a valid exercise of the police power and does not contravene constitutional guarantees.)" R. 15-16.

Thereupon the Court of Common Pleas entered its judgment affirming the conviction as shown in the Journal Entry. R. 16.

Appellant duly filed her motion for new trial, complaining of the ruling of the court, in the manner required by Ohio procedure. (R. 14) Said motion was overruled, to which action the appellant excepted and was allowed by the court the statutory time in which to perfect appeal to the Court of Appeals of Ohio. R. 11.

COURT OF APPEALS PROCEDURE

Appellant duly gave notice of appeal from the judgment rendered by the Court of Common Pleas, which was duly served upon the Clerk and attorney for appellee and duly filed in Court of Common Pleas. R. 13.

Appellant duly filed in the Court of Appeals in the time and manner required by Ohio procedure, her assignments of error, complaining of the rulings of the Mayor's Court and Common Pleas Court in failing to hold the ordinance unconstitutional and void as construed and applied to appellant. R. 12-13.

The Court of Appeals of Ohio duly overruled the assignments of error and affirmed the judgment of conviction and the judgment of the Court of Common Pleas and held that the ordinance was "a valid exercise of the police power and does not contravene the the constitutional guarantees of the defendant-appellant." R. 10-11.

OHIO SUPREME COURT PROCEEDINGS

In the time and manner required by law, appellant served and filed her notice of appeal from the Court of Appeals to the Supreme Court of Ohio and duly perfected her said appeal to Ohio Supreme Court. R. 5, 9.

Appellant duly filed within the time and manner required by law her assignments of error in the Supreme Court of Ohio, duly attacking the validity of the ordinance on the grounds that it was contrary to the Constitutions of the United States and the State of Ohio. R. 8, 9.

On February 4, 1942, the Ohio Supreme Court rendered a judgment as shown by the journal entries and memorandum decision dismissing the appeal because no debatable constitutional question was involved. R. 7.

FEDERAL QUESTIONS PRESENTED, DULY PASSED ON, IN ALL COURTS BELOW

The Ohio Supreme Court, the Court of Appeals of Ohio, the Common Pleas Court and the Mayor's Court of Struthers each duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and each of said courts held it valid and constitutional, both on its face and as applied, and found that appellant was not deprived of her rights of freedom of worship and freedom of press, contrary to the First and Fourteenth Amendments to the United States Constitution. R. 7, 10, 15, 30.

The Ohio Supreme Court sustained the conviction of appellant and affirmed the judgment of the trial court by dismissing the appeal. R. 7-8.

In the petition for appeal and the assignments of error duly filed, appellant complains of the judgment of the Ohio Supreme Court for and on account of each ground set forth in brief filed in said court. R. 1-3.

Specification of Errors to Be Urged

The Ohio Supreme Court committed reversible error in dismissing the appeal, in overruling the assignments of error and in rendering judgment because the court should have held that

(1) The Mayor's Court committed reversible error in denying the motion to dismiss filed at the close of all the evidence because the ordinance as construed and applied abridges and prohibits the exercise by appellant of her freedom to worship Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Mayor's Court committed reversible error in failing to hold that the ordinance in question is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Mayor's Court committed reversible error in failing to hold that the ordinance in question is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

Points for Argument

ONE

This Court should hold that the ordinance as construed and applied abridges and prohibits exercise by appellant of her freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

This Court should hold that the ordinance is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

This Court should hold that the ordinance is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Summary of Argument

The evidence shows that appellant is a minister of the gospel, and the distribution of the leaflet entitled "Religion as a World Remedy" from house to house, together with the literature which she offered to the householders, was a necessary part of her preaching of the gospel. On its face the ordinance does not abridge freedom of worship but it has been misused and misapplied to the distribution of literature relating to the Bible; and to the extent that it prohibits the distribution thereof to the householder, the ordinance is unconstitutional because abridging the rights of freedom of worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution. **Cantwell** v. **Connecticut,** 310 U. S. 296. On this point, it is the **application** of the ordinance to the particular facts that makes it unconstitutional. **Concordia Fire Ins. Co. v. Illinois,** 292 U. S. 535,545.

On its face and as construed and applied, the ordinance prohibits and abridges exercise of the fundamental personal rights of freedom of speech and of press by denying to the distributor of literature the right to summon to the door for the purpose of leaving literature, a member of the household in the homes where calls are made in the city. **Schneider** v. **State,** 308 U. S. 147; **Hague** v. **C. I. O.,** 307 U. S. 496; **Lovell** v. **Griffin,** 303 U. S. 444; **Thornhill** v. **Alabama,** 310 U. S. 88; **Carlson** v. **California,** 310 U. S. 106; **Near** v. **Minnesota,** 283 U. S. 697, 707-716.

The ordinance is **prohibitory** in its terms and is NOT regulatory.

There is no way one can distribute literature from house to house without violating the ordinance.

Therefore on its face and as construed and applied the ordinance abridges appellant's rights of freedom of speech and press, contrary to the First and Fourteenth Amendments.

Regardless of the construction and application given the ordinance, the terms thereof provide for arbitrary and unreasonable means that have no relation to the police power. The interests of the state cannot possibly be affected or even remotely interfered with by the summoning to the door of a householder to receive a printed message. It thereby makes unlawful and a nuisance that which is inherently lawful, and no reasonable argument can be advanced in support of the **prohibitory** provisions of the ordinance. **Weaver v. Palmer Bros. Co.,** 270 U. S. 402; **Dobbins v. Los Angeles,** 195 U. S. 223; **Panhandle E. Pipe Line Co. v. State H'way Com'n,** 294 U. S. 613, 622; **Purity Extract Co. v. Lynch,** 226 U. S. 192, 204, Freund's **The Police Power,** page 133.

Insofar as the ordinance is applied to the exercise of a fundamental personal right guaranteed by the First Amendment and secured against abridgment by the state by the Fourteenth Amendment, there is no presumption in favor of the constitutionality of the ordinance. The burden is upon the City of Struthers to establish the constitutionality of the ordinance and that it is directed at an **abuse** of the privileges of freedom of speech, press and worship. **United States v. Carolene Prod. Co.,** 304 U. S. 144, 152.

ARGUMENT

ONE

This Court should hold that the ordinance as construed and applied abridges and prohibits exercise by appellant of her freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

Freedom to worship Almighty God, or to practice any religious principle, or to teach any doctrine, is guaranteed every person in the United States. **Watson v. Jones,** 80 U. S. 679,728. This right cannot be invaded by the state or municipal subdivision thereof through ordinance or statute except when the practice presents a clear, present and immediate danger that the morals of the people, the property rights of others, or the peace and safety of the nation will be invaded. **Cantwell v. Connecticut,** 310 U. S. 296. Even then the law must be directed at the **abuse** of the privilege and cannot be curtailed by general laws prohibiting the exercise of the right itself.

Appellant and other of Jehovah's witnesses were preaching from house to house in the City of Struthers by offering the literature explaining the Bible and by inviting the people to attend the Convention of Jehovah's witnesses to be held in various cities of the United States, with Columbus, Ohio, as the key-city. Appellant believed it was her duty as a minister of the gospel to advertise this important Christian assembly and the Bible talk entitled "Religion as a World Remedy" by means of distributing the leaflet and invitation from house to house. This was her method of preaching the gospel and aiding the Watchtower Bible

and Tract Society and Jehovah's witnesses in further preaching the gospel and advertising the Kingdom of Almighty God as the only hope for deliverance of mankind from disaster.

The courts below have construed the ordinance so as to apply to activity of appellant, and this Court is bound to accept that construction and concede that the ordinance does proscribe the activity of appellant. This Court, however, is not precluded from holding that the Federal constitutional rights have been invaded by the ordinance.

The ordinance does not mention "ministers" calling from house to house and clearly was not intended to include "ministers", but since it has been construed to include the "ordained minister" here involved, the right to preach the gospel has been invaded contrary to the guaranties of freedom of worship in the Constitution of the United States.

In addition to guaranteeing the right to ministers of the Gospel and other Christian workers to call from house to house to bring the message of God's kingdom to the people at their homes, the law and Constitution also guarantees the right to such ministers to call at the people's homes for the purpose of inviting them to attend a Christian assembly and listen to speeches to be delivered on Bible subjects and, specifically, the talk "Religion as a World Remedy", advertised as the highlight of the 1940 nation-wide Convention of Jehovah's witnesses.

It is to be noticed that the record fails to disclose that appellant offered to sell anything or took a contribution. There is no evidence pertaining to or from which it might be inferred that there was a commercial venture of any sort. The leaflet says that the speech is free.

When Jesus instituted Christian worship, the Jews had been in the habit of going up to the mountain at Samaria or to Jerusalem to worship in the temple. He laid down a definite rule and by His course of action and words showed that true worship of God was not confined to temples but consisted in worshiping in spirit and in truth by going from house to house and visiting the people in their homes and there declaring the message of good news of God's kingdom as outlined in the Scriptures. In John 4:23 it is stated that "true worshippers shall worship the Father in spirit and in truth". In Acts 1:8, it is declared that this message shall be declared "unto the uttermost part of the earth". Speaking of the very time through which the nations are now passing—wars, rumors of wars, men's hearts failing them for fear of things coming upon the earth—Jesus specifically instructed His ministers (Matthew 24:14): "And this gospel [good news] of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." The kingdom here mentioned is the THEOCRACY for which Christ Jesus taught all true worshipers of Almighty God to pray (Matthew 6: 9-13) and promised that such Kingdom would be established here on the earth for the blessing of all people of good will toward Almighty God that will be carried through His battle at Armageddon, near at hand.

When Jesus was before Pilate, He emphasized the fact that He was the King of this Theocracy or Kingdom which would be established fully in heaven and in due time fully in the earth and that He came into the world for the purpose of bearing witness to this truth. Jesus said, "For this cause came I into the world, that I should bear witness unto the truth." (John 18:37) His consistent, unbreakable course of action brought upon Him much persecution; His apostles

suffered likewise; and ever since all true Christians have continued to suffer and be persecuted, not for any wrong or misconduct on their part but because they maintain their integrity and keep their faith with Jehovah God and Christ Jesus in spite of all opposition. John 15:20; 2 Timothy 3:12; 1 Peter 4:12-14.

At the time of her arrest appellant was bearing witness to the gospel from house to house. Today it is much more expedient to contact people at their homes and there discuss with them the importance of home Bible study and attending meetings of the sort advertised by appellant by the delivery to the people at their homes the message in printed form so that they can have a permanent record of the matter discussed by Jehovah's witnesses and that they might study the same when Jehovah's witnesses have departed from the house. Thus the message can be read and studied at the householder's convenience.

The ordinance in question prohibits effective distribution of literature from house to house. It curtails circulation and prohibits **proper exercise** of the fundamental inherent right of the citizen to discuss with his neighbor any proposition or matter of importance relating to public affairs in which the citizen may be sufficiently interested to circulate same in writing from house to house.

By this ordinance any minister is denied the privilege of distributing an invitation to attend the Sunday morning sermon.

It cannot be argued that calling from house to house is not a proper way of worship or a proper way of **exercising** freedom to worship.

The record shows that appellant's conduct did not involve a violation of the law of morals, did not infringe the property rights of others and did not imperil or endanger the peace and safety of the city,

state or nation. In the circumstances this field of right practice cannot be invaded.

For approximately six thousand years Jehovah has had faithful witnesses on the earth, all of whom are described in the Bible as Jehovah's witnesses. Since the days of Christ Jesus, Jehovah's witnesses have consistently preached the gospel from house to house and from door to door in the same manner as did the apostles. For the purpose of preaching this gospel of the Kingdom unto all the world as a witness in this modern day or time of the end (Matthew 24:14, Daniel 12:4) the Watch Tower Bible and Tract Society was incorporated and is now used to conduct the work of Jehovah's witnesses in an orderly and businesslike fashion.

For over sixty years Jehovah's witnesses and the Watch Tower Bible and Tract Society have carried on their work from house to house in the United States and throughout the world. Due to totalitarian aggression in the axis-dominated lands such work has been greatly curtailed and impaired by laws banning the activity, making it necessary to carry on in the manner that the persecuted Christians did in the days of Nero. During the past sixty years millions of people have been helped and comforted by this message; thousands would not have received Bible instruction of any kind or character but for Jehovah's witnesses. The fact that the "recognized" churches do not accept the manner of preaching used by Jehovah's witnesses and do not agree with the Bible doctrines contained in the literature published and circulated by Jehovah's witnesses is no basis for stopping or curtailing the circulation. It is by free and unhampered circulation of all opinion and doctrines from house to house and publicly that the people of democratic lands are able to gain a knowledge and make an independent choice.

To promote the circulation of information and opinion relating to Bible matters leads to enlightenment and progress. Most people are born and reared in some sort of church. A large proportion of the people are born or reared in some recognized religion and would not have an opportunity to know whether or not their minds had been blinded to the Truth by the doctrines taught by such recognized religion unless some other person discussed the doctrines and practices of their recognized religion.

"Come now, and let us reason together, saith the LORD." (Isaiah 1:18) There cannot be reason and discussion unless there be contact with the people at their homes. The ordinance in question prohibits personal contact, which is necessary to enlightenment and discussion. One could not determine whether or not a householder was interested, favorable or antagonistic to the message and would not know whether to stay away from the house, unless he could have personal contact with the householder. The ordinance, therefore, quenches the light of Truth and prohibits the discussion of all current problems, political, religious, commercial or any other, and leads to gross darkness and ignorance. House-to-house distribution of literature is PROHIBITED by the ordinance.

The appellee argues that the ordinance is valid because it is limited in its operation to the homes of the people and that it is for the protection of the privacy of the people in their homes. These arguments are not sufficient and do not justify the admitted abridgment of the right to call at the people's homes and to discuss with them the literature or leaflet to be offered to them.

In **Schneider** v. **State**, 308 U. S. 147, this Court held that "the most effective way of bringing them [pamphlets] to the notice of individuals is their dis-

tribution at the homes of the people." [Bracketed word added.]

In the same case, Justice Roberts said that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

In **Cantwell** v. **Connecticut,** 310 U. S. 296, in disposing of the same argument this Court said: "Equally obvious is it that a state may not unduly suppress communication of views, religious or other, under the guise of conserving desirable conditions." And in **Schneider** v. **State,** supra, the Court said:

> "We are of the opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

The ordinance does not secure to the citizens their privacy. It imprisons them by keeping away from them the distributor of a message of benefit and mutual interest. The Ohio trespass statutes are sufficient to protect the householder in the event the caller enters when ordered not to do so or refuses to leave after being requested to do so. No such circum-

stances exist in this case. There is no need for invasion of the householder's right to determine for himself in every case, as it arises, whether the particular visitor or his message is or is not desired after the resident has had an opportunity to consider and decide. It is time enough for the city to intervene when an actual trespass is discerned and committed and not before. **The law in question is totalitarian.** It blinds the people by keeping from them messages and news concerning the real danger that threatens them and all other Americans as warned by appellant in the leaflet distributed without price.

The police power of the City of Struthers is not above the Constitution, the provisions of which the courts will invoke to protect the rights of individual citizens and residents and others from an invasion of their civil rights under the guise of police measures.

The ordinance does not have for its real purpose the prevention of trespass. The act of trespass is not prohibited. One can trespass without violating the law. The ordinance has erected around each house in the city a spike fence and wall which would exclude a neighbor or fellow citizen from calling upon the residents to discuss an important subject and leave with the resident beneficial literature.

The ordinance prohibits clergymen, ministers, rabbis and priests from calling from house to house to invite a person to attend any sort of a religious service.

The Supreme Court of Louisiana, in disposing of a question similar to that with which the Court is now confronted, said, in **City of Shreveport** v. **Amos Teague,** 8 S. 2d 640:

> "To hold otherwise, we would be compelled to attribute to the City Council of Shreveport the intention of declaring that the visitation into

homes (without previous invitations) by priests and ministers of all denominations, accompanied by the sale of Biblical literature, constitutes a nuisance and a misdemeanor. This we will not do."

From the foregoing it can be seen that the preaching done by appellant requires that she discuss with the householders and contact the residents with reference to the matter distributed, particularly the pamphlets she was distributing among the people. If it is made unlawful to summon a person to the door to receive the printed message, how could appellant know whether the persons were interested or not? If denied that right to call the people to the door, it would require leaving the literature and calling back at a later date, which would double the inconvenience of the parties that could easily be spared by a contact with the householder and discussion on the first visit.

The ordinance deprives householders of their inherent personal rights to determine whether or not they will receive from distributors of literature, pamphlets or other literature, which are and rightly can be offered from house to house. The individual distributors have a vital message to deliver to the residents of the city. If they can not discuss with the residents the literature until after it has been delivered, it is necessary that a call be made in person or by telephone. Are we to expect that the distributor of literature must make a telephone list of all the residents of each street where he delivers literature and then telephone each individual or call back in person upon each individual resident in an attempt to determine whether or not the resident is interested in the literature? This would impose an impossible burden upon the disseminator of ideas. It would also place a very burdensome duty upon the householder. It would

require the leaving of literature at every home whether desired or not and would become a greater burden than the summoning of the householder in the first instance.

The ordinance makes the activity completely impractical and effectively deprives the pamphleteer and like disseminator of ideas of all right to distribute literature. The ordinance therefore places the cart before the horse.

The ordinance PROHIBITS outright the dissemination of Christian pamphlets. In **Cantwell** v. **Connecticut,** supra, Mr. Justice Roberts, speaking for this Court, said: "No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views."

The basis for the decisions below was the claim that the ordinance protects the **privacy** of the residents. Viewing the matter now from the **standpoint of each resident,** it is far more important that civil rights of the people of Struthers, Ohio, be preserved than to take such extravagant and unreasonable steps to 'protect the privacy' of the inhabitants of the city. The inhabitants have a civil right in this case in that they are the recipients of the literature distributed. The householders' right to **receive** is equally as important as the distributors' right to **deliver** pamphlets containing information and opinion. The inconvenience of answering the door is not justification for denial of constitutional rights. **Schneider** v. **State,** supra.

The ordinance cuts off from the distributor his main, if not sole, avenue of communication of information and opinion and invitation to attend Bible meetings and hear Bible discourses, i. e., to the homes of the people. He is denied more interested persons for want of contact. The ordinance cuts off the necessary

democratic, social intercourse among people, and thereby makes it dangerous for one citizen to call upon and visit his neighbor for such lawful and proper purposes.

The ordinance is therefore unconstitutional because abridging the right of freedom of worship.

TWO

This Court should hold that the ordinance is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

This Court has definitely held that house-to-house dissemination of information and opinion is proper and necessary. **Schneider** v. **State,** 308 U. S. 147. This Court is not called upon to determine whether or not the appellant has violated the trespass laws of the City of Struthers, Ohio, or of the State of Ohio. The undisputed evidence is that she was **not a trespasser** and did not violate the rights of any householder. If, in an isolated case, the law of trespass is violated by the distributor of literature, that is, by abusing his right of freedom of press by trespassing upon private property either by refusing to leave when requested to do so or intruding in the house of an individual contrary to request not to enter, such offenses can be dealt with under the trespass laws which could be enforced without violating the fundamental rights. It is not proper and necessary to prohibit the exercise of the right in order to prevent trespasses.

Whether this type of ordinance is valid when applied to commercial peddling and canvassing for ordinary articles of merchandise, or commercial advertising of ordinary articles of goods, wares and merchandise, is not necessary for this Court to decide in the instant case. The rule announced in the case of **Valentine** v. **Chrestensen,** 316 U. S. 52, does not apply, for here there is not involved any commercial advertisement of any kind or character.

The ordinance cannot be sustained because it relates to summoning to the door the householder. The act of calling the householder to the door is a necessary part of distribution and circulation and without such there can be no effective distribution and circulation. This Court has held that the "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value". (**Ex parte Jackson,** 96 U. S. 727,733) Such rule was affirmed by this Court in **Lovell** v. **Griffin,** 303 U. S. 444, and in **Schneider** v. **State,** supra.

In accord with the principle of unrestricted distribution of literature announced in those cases, all must realize that a democratic system of government cannot exist and enlightenment in any avenue of human activity cannot be had unless the free discussion and circulation of opinion and information at the homes of the people be left free and unhampered by any sort of law. When the people are correctly informed and any change in government, in science, in art or manner of worship is necessary, either collectively or individually, the desired results are brought about PEACEABLY. If freedom of expression is shackled, it leads to OPEN VIOLENCE and BLOODSHED as the Russian and French Revolutions abundantly attest. When the people are deprived of knowledge and the

truth is distorted, they become the easy prey of deception, tyranny and abject servitude, examples of which are found in the modern dictatorships of Mussolini, of Stalin, and of Goering, Goebbels and Hitler. Suppression and distortion of opinions, including the Truth of the Bible, is the path that leads to totalitarianism. During the "dark ages" the censorship of religious ideas prevailed, the people were held in ignorance. Anyone who did not agree with Rome was excommunicated, a person who read the Bible was branded as a heretic. Those were the days of the fiery stake, the rack and the bloody inquisition. When censorship and oppression were on the throne, the people suffered and freedom was gained only by violence, open revolt and a long series of religious wars which drenched the continent of Europe. The American colonists learned the lesson of the priceless value of freedom.

Why is there such a reaction by a city of this sort against freedom of the press? The answer and the reason is the same as existed by reason of certain reactionary moves of oppression throughout the centuries past: The party in power does not like **the message.** The founder of the Holy Roman Empire did not like the publication of the early reformers, Luther, Huss and Wycliff, because such explanations of the Bible hurt and destroyed and dried up the religious fields of that organization. The reactionary move against such liberal reformation movement was the banning of the Bible and Bible literature. Later in 1712, Queen Anne of England urged a tax upon all newspapers and printing to choke the information about the government and to prevent them from reaching the people. Even today the reactionary anti-democratic element curse the public press, freedom of

press, freedom of worship and the constitutional liberties of their enemies and those whom they hate and would speedily deny the right of freedom of press, speech and of worship of such persons. Censorship and other means of repressing circulation of information have ever been the methods of tyrants and the path to dictatorship, oppression and ruin. Witness Nazi Germany and other Axis-dominated lands.

These measures are foisted upon the people in a **time of national emergency** when hysteria seeks an avenue of change and revolution, when the people's minds are turned to seemingly more important matters. In **such times** there is even greater reason to use every legal precaution to PRESERVE inviolate the fundamental rights of the people. In **De Jonge** v. **Oregon**, 299 U. S. 353, Mr. Justice Hughes said:

> "These rights may be abused by using speech or press or assembly in order to incite violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that change, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

There is no presumption that the ordinance is constitutional.

When, as here, there is involved the **application** of an ordinance of this sort to the **exercise** of fundamental personal rights guaranteed against abridgment by the First Amendment, and there is no showing of an abuse of the rights, the legislative declaration of the state or city must yield to the stronger and express provision of the First Amendment. See **United States** v. **Carolene Products Co.**, 304 U. S. 144, 152; **Stromberg** v. **California**, 283 U. S. 359; also, **Lovell** v. **Griffin**, supra; **Schneider** v. **State**, supra, in which latter case Mr. Justice Roberts said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

See also **Hannan** v. **Haverhill** (CCA-1) 120 F. 2d 87, holding to the same effect:

> "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs."

In **Herndon** v. **Lowry**, 301 U. S. 242, this Court said:

> "The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution."

There must be a showing that there is a clear, immediate and present danger that some right which the state is allowed to protect has been or will be invaded unless the legislation is sustained and enforced. **Bridges** v. **California,** 314 U. S. 252.

Even under the doctrine of **Jones** v. **Opelika,** 316 U. S. 584, the ordinance is admittedly unconstitutional and void because it is absolutely PROHIBITORY and is NOT regulatory. The **Jones** v. **Opelika** majority opinion said: "Ordinances absolutely prohibiting the exercise of this right to disseminate information are, **a fortiori,** invalid." Here we rely upon **Hague** v. **C. I. O.,** 307 U. S. 496, 501, 518, as authority. There this Court held unconstitutional the Jersey City ordinance which forbade any person in the city "to distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card, or pamphlet." It was so declared because the ordinance was an abridgment of freedoms of assembly, speech and press.

In the courts below the appellee relied upon the case of **San Francisco News Co.** v. **City of South San Francisco,** 69 F. 2d 879, 886. The Struthers ordinance is not similar to the one of South San Francisco involved in that case. The Struthers ordinance actually **does forbid manual delivery** of publications by carrier to a member of the household. Therefore the basis for holding the South San Francisco ordinance valid does not apply here. Such is not in point. There the Circuit Court of Appeals said:

> ". . . The ordinance does not forbid the manual delivery of the publication by the carrier to a member of the household . . ."

Here no claim or intimation is made that appellant **forced** her message on anyone. If it can be considered

as **forcing**, then every United States postman in the country is guilty of **forcing** himself upon others in their homes and **invading their privacy**; and such is equally true of every **Western Union** messenger boy in the country; where either the postman or the messenger must hand the message personally to the householder.

In absence of any evidence in the record tending to show that appellant was disorderly, offensive, or a trespasser, it cannot be said that the simple act of summoning to the door and handing the householder the printed leaflet inviting the householder to a meeting at which will be discussed a topic of interest to one and all constituted a nuisance warranting conviction under the ordinance. The ordinance is manifestly an invasion of appellant's constitutional right of freedom of the press.

A Chicago ordinance, for instance, which banned the distribution of handbills except by putting them under doors and in letter boxes and prohibited the ringing of any bell on the premises, was held by the court to be invalid, as an unreasonable interference with private rights, in **Chicago** v. **Schultz**, 341 Ill. 208, 173 N. E. 276. The court cited with approval the case of **People** v. **Armstrong**, 73 Mich. 288, 41 N. W. 275, which had held a handbill ordinance invalid on the ground that it was unreasonable if it included in its prohibition the circulating of an "invitation to a moral and Christian assembly of people gathered together for the public good."

It is obvious that to prohibit appellant from calling the inmate of any residence to the door for the purpose of receiving the printed leaflets is to hamper and restrict materially the distribution, because it leaves no practicable means of contact with the householders

at their homes. Without personal contact, there can be no practical way to make certain that the leaflets will ever reach intended recipients who may be willing to receive them; and all opportunity is lost to engage in oral conversation in connection with the distribution.

It is no answer to say that distribution is not materially interfered with because appellant could still leave the leaflets on the porch or elsewhere on the premises without disturbing the occupants. If the ordinance is valid as enforced against appellant, then so would be an ordinance **prohibiting** distribution by leaving on the porch or elsewhere on the premises, and thus, piecemeal, all practicable means of distribution at residences could be destroyed.

Cf. **Bohnke** v. **People**, No. 1005 Oct. T. 1941, certiorari denied, 316 U. S. 667, 62 S. Ct. 1034; rehearing denied, 316 U. S. 713, 62 S. Ct. 1306.

The ordinance encourages littering and scattering of literature and discourages the lawful and proper distribution of literature, i. e., handing and delivery of same from distributor to recipient.

The ordinance penalizes one who desires and endeavors to distribute or disseminate information openly, the "right way".

There is no question of distribution of commercial advertisement as was involved in the case of **Valentine** v. **Chrestensen**, supra.

This case is within the rule announced and laid down in **Donley** v. **City of Colorado Springs**, 40 F. Supp. 15, where the "Green River" ordinance under which Jehovah's witnesses had been convicted and was held inapplicable to their preaching the Gospel and the case of **Green River** v. **Fuller Brush Co.**, 65 F. 2d 112, was clearly distinguished. To the same effect is **Zim-**

mermann v. **London, Ohio,** 38 F. Supp. 582, 584, which also involved Jehovah's witnesses, and where United States District Judge Underwood said:

> "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to a **virtual prohibition** upon such distribution . . . Certainly there is no prospect under the ordinance for the 'free and unhampered distribution of pamphlets' as envisioned by the Supreme Court . . ." **[Bold Face** added].

The ordinance is not regulatory but is **prohibitory.** As long as one does not ring a door bell or knock on a door he is permitted to make a nuisance of himself at all hours of the day or night and at all places.

The ordinance also makes unlawful the ringing of a door bell or knocking on a door by a person who is invited on the premises by the householder for the purpose of leaving literature containing information and opinion.

The ordinance here under examination, if allowed the construction and application given it by the lower courts, absolutely prohibits the summoning of one to the door of any residence for the purpose of receiving any handbill, circular or other advertisement, and this without restriction as to time, manner, circumstances, or character of the information contained in the printed matter; and without regard to the willingness or desire of the householder. It forbids even that which the householder permits or invites. It makes no attempt to differentiate between persons who conduct themselves properly and those who do not. Such ordinance is not regulatory but is preventive, PROHIBITIVE, as against an act of the appellant which

is in itself innocent, and which is neither a public nuisance nor a trespass, but in fact **beneficial**, proper.

Therefore we suggest that the ordinance is void on its face and as construed and applied because prohibiting circulation and distribution and thus abridging the right of freedom of press, contrary to the First and Fourteenth Amendments to the United States Constitution. **Thornhill** v. **Alabama**, 310 U. S. 88; **Carlson** v. **California**, 310 U. S. 106; **Lovell** v. **Griffin**, supra; **Schneider** v. **State**, supra; **Cantwell** v. **Connecticut**, supra; **Hague** v. **C. I. O.**, supra.

The ordinance penalizes the house-to-house distributor of literature and makes it unlawful to summon the householder. The ordinance thus destroys circulation and distribution.

Although the city of Struthers may regulate peddlers of merchandise, such authority does not permit the municipality to **prohibit** activities that are expressly protected by constitutional guaranties. The ordinance is therefore unconstitutional because impairing the rights of freedom of speech and press.

THREE

This Court should hold that the ordinance is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

The undisputed evidence and findings of the courts below show that appellant was not a "trespasser" within the meaning of that term, and that she was a **licensee**, or implied **invitee**, because of the fact that she

was calling at the people's homes, presenting to each householder opportunity to consider a subject in which the distributor (appellant) and the householders individually had a mutual interest.

Appellant is an **invitee** because she entered upon the premises of the people's homes to present a message for the benefit of all the residents. The message related to a subject matter in which every householder and appellant had a mutual interest. The subject matter shows that it is of public convenience, interest and necessity to have a revelation from the Bible as to whether or not religion is a world remedy for the present evils now suffered by those of the world. Being for the people's benefit to obtain such information, it is presumed that all residents of good will toward Almighty God would gladly receive the information. Until each householder demonstrated to appellant that he was not interested, the mutuality of interest can be presumed because the very ~~nature~~ of the message presumed such an interest. This presumption of mutuality of interest and the fact that appellant was an **invitee** or **licensee** could not be overcome until after the householder had demonstrated his lack of interest or disapproval which could not be determined until after the householder was summoned to the door.

There is no evidence that appellant was requested to leave the premises and refused to do so. It is not contended that she acted in an inappropriate manner. The conviction was based upon the construction of the ordinance by the courts below.

For more than half a century last past the custom has been recognized and sanctioned by law that householders have the privilege and right to install and use the electric door bell, and various callers are protected in the use of the same. It is an established fact that for centuries people have placed mechanical knockers

and other devices on the doors of their homes for the very purpose of summoning the inmates to the door when a legitimate caller, who had not been previously advised to stay away, had need to announce his presence.[1] From time immemorial the **knock** at the door, when not used to breach the peace, has been a legitimate means of summoning the inmates to the door for purposes of intercommunication; e. g., "Behold, I [the Lord Jesus Christ] stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me." (Revelation 3:20) "Knock, and it shall be opened unto you." (Matthew 7:7; Luke 11:9) See, also, Acts 12:13-16; Luke 12:36; 13:25; Canticles 5:2; cf. Genesis 18:1-6 and Hebrews 13:2; Acts 5:42; 20:20.

The knock at the door, mechanical knocker, manual and electric door bell or chimes, and the visible **approach** of a visitor or messenger to the home of another bespeak a private right **jointly and mutually shared** by both householder and caller, long established by custom and recognized by law. These are all conveniences for the purpose of effecting legitimate and mutually beneficial intercommunication of caller and resident.

The calling at the residences of the people is a private right and unless the householder has previously made known that callers are not wanted, the municipality has no power to interfere with this private right. Such private right cannot be arbitrarily outlawed by a capricious calling ordinance, without

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1 "Open, lock,
Whoever knocks!"—**Macbeth**, Act iii, Sc. 4, William Shakespeare (1564-1616).

"Shut, shut the door, good John! fatigued, I said;
Tie up the knocker! say I'm sick, I'm dead."—**Epistle to Dr. Arbuthnot: Prologue to the Satires**, Alexander Pope (1688-1744).

reasonable grounds; and especially when there is no connection in doing so on the grounds of protecting the public health, safety and welfare. On this very point the law writers of this Nation are in accord. We here quote from a recent decision, **City of Mount Sterling** v. **Donaldson Baking Co.**, 287 Ky. 781, 155 S. W. 2d 237 (October 17, 1941):

> "We can see no connection between the health, morals, security and general welfare of the citizens of Mount Sterling which the ordinance was purportedly enacted to protect, and the orderly solicitation on private premises conducted by persons in good health in an inoffensive manner asking householders to extend an invitation to the company for the salesmen and trucks to call at their residences for the purpose of selling and delivering bakery products. We regard the ordinance as unreasonable, arbitrary and unrelated to the protection of the citizens of Mount Sterling. In writing on the law of torts Judge Cooley said:
>
> > " 'No doubt one may visit at another's place of business for no other motive than curiosity, without incurring liability, unless he is warned away by placard or otherwise. So every man, by implication, invites others to come to his house as they may have proper occasion, either of business, or courtesy, for information, etc. Custom must determine in these cases what the limit is of the implied invitation.' 2 Cooley, Torts, 4th Ed., 238, Section 248. '
>
> "We agree with what was written in Prior v. White, 132 Fla. 1, 180 S. 347, 116 ALR 1176, that where a householder does not externally manifest in some way his desire not to be molested by solici-

tors, the latter may take custom and usage as implying consent to call (where such custom and usage exists), and that an ordinance declaring solicitation without invitation to be a nuisance and punishable as such cannot be upheld as a proper exercise of police power. We cannot agree with the reasoning expressed in Town of Green River v. Fuller Brush Co., 10 Cir., 65 F. 2d 112, 89 ALR 177, that the ringing of door bells of private residences by itinerant vendors and solicitors is in fact a nuisance to the occupants of homes. It is difficult to understand how ringing a door bell of a private residence one time by a solicitor could be a public nuisance and subject the perpetrator to a fine. If such be a nuisance, it would only annoy the householder whose door bell was rung and not annoy the general public. In Petroleum Ref'g Co. v. Com., 102 Ky. 272, 232 S. W. 421, 423, we defined "nuisance" thus:

> "'A nuisance is public where it affects the rights enjoyed by citizens as part of the public, that is, the right to which every citizen is entitled, whereas a private nuisance is anything done to the hurt, annoyance, or detriment of the lands, tenements, or hereditaments of another.' Also see 46 C. J., Section 3, pages 646-648."

The ordinance in question does not prohibit trespassing. Even a trespasser could not be convicted so long as he did not ring a door bell or knock on the door. The act of calling from house to house is a lawful practice and cannot be prohibited. The act of distributing literature from house to house is exercise of a right guaranteed by the Constitution and cannot be infringed unduly by any law. The act of going from

house to house is not a nuisance and does not constitute trespass. **Borchert** v. **City of Ranger** (Texas), **et al.** 42 F. Supp. 577 (ordinance of Ranger, Texas); **Widle** v. **Harrison** (Arkansas) **et al.**, (unreported decree by United States District Court for Western District of Arkansas, January 9, 1941; **Donley** v. **Colorado Springs**, supra; **Zimmermann** v. **London** (Ohio), supra; **City of Columbia** (S. C.) v. **Alexander**, 119 S. E. 241; **Real Silk Hosiery Mills** v. **City of Richmond, Calif.**, 298 F. 126; **Ex parte Maynard**, 275 S. W. 1071; **City of Orangeburg** v. **Farmer**, 181 S. C. 143, 186 S. E. 783; **Jewel Tea Co.** v. **Town of Bel Air**, 172 Md. 536, 192 A. 417; **Prior** v. **White**, 180 So. 347, 132 Fla. 1; **White** v. **Town of Culpeper**, 172 Va. 630, 1 S. E. 2d 269; **New Jersey Good Humor, Inc.** v. **Bd. of Comm.**, 11 A. 2d 113, 114; **City of McAlester** (Okla.) v. **Grand Union Tea Co.**, 98 P. 2d 924; **De Berry** v. **City of LaGrange**, 62 Ga. App. 74, 8 S. E. 2d 147; **Jewel Tea Co.** v. **City of Geneva, Nebr.**, 291 N. W. 664; **Hague** v. **C. I. O. et al.**, 101 F. 2d 774, 307 U. S. 496; **Shreveport** v. **Teague**, 8 So. 2d 640; **Ex parte Faulkner**, 158 S. W. 2d 525.

The ordinance suggests littering and scattering of literature, rather than proper distribution thereof by handing to the householder. The best and most effective way of distributing pamphlets is at the homes of the people. **Schneider** v. **State**, 308 U. S. 147. This ordinance is a prohibition outright and makes a nullity of that right of distribution.

The appellee admits the right to distribute literature but makes unlawful the only lawful and legal means of so distributing it.

Invalidity of the ordinance is manifest in the fact that one can go upon the porch of another and scatter

literature about unlawfully and not be prosecuted under the ordinance unless he rings a door bell or knocks at a door. The ordinance is manifestly unlawful.

The courts have held that the legislature cannot make unlawful that which is inherently lawful and right when no justification therefor is shown. Free movement of the people **for right purposes** should not be hampered or destroyed, as this ordinance does. One's status of 'implied invitee or licensee' cannot be destroyed by legislative fiat without express consent of the persons involved, as is done in this case.

It is true that a man's home is his castle. This ancient rule of the common law has, however, been greatly modified in recent times. As Mr. Justice Holmes has said (**McKee** v. **Gratz**, 260 U. S. 127), "A license [to enter] may be implied from the habits of the country." "A license may be implied to enter the house of another, at usual and reasonable hours, and in a customary manner, for any of the common purposes of life." (37 C. J. 283) The path up to the door of a man's house, the absence of gate or other bar, the steps to the porch and the doorbell or knocker are all in themselves and in accordance with use and wont implied invitations to approach. The man who stands on the porch under such circumstances is not a trespasser under well-established law, but a **licensee.** (See **Stacy** v. **Shapiro**, 212 App. Div. 723; 209 N. Y. S. 305) **And in the case at bar, be it noted, appellant was not even seeking entry to the house but merely sought to speak to householders or to leave leaflets with the householders.**

The ordinance here deprives the householders of their inherent personal right to recognize and receive

at their doors any person who distributes literature.

There is no rational connection between the means employed and the end aimed at by the ordinance. The police power, relied upon by appellee, has its limitations recognized by this Court, when confronted with the barrier of constitutional protection of the rights of freedom of worship and of press. The principle here contended for is well stated in Freund's work on "The Police Power" (page 133, section 143), where it is said:

> "The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? is it possible to secure the object sought without impairing essential rights and principles? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

The ordinance makes no distinction whatever as to one who is on the property as an invitee, or trespasser: It absolutely prohibits, outright, the inoffensive and lawful act of ringing the doorbell or knocking on the door, regardless of the purpose of the visit. The messenger boy making a call, the postman finding it necessary to deliver mail into the hands of the householder, or the minister calling on a member of his church would violate the ordinance and subject himself to conviction if he were to knock on the door or ring the doorbell announcing his arrival and seeking to deliver any kind of literature.

Conclusion

A review of the facts and law reveals that there is no reason or logic to deprive the people of their rights to receive literature at their homes. **This ordinance is a trick and a cunning device** that attempts to interfere with the ordinary and lawful communication of opinion and knowledge at the homes of the people. Unhampered dissemination of opinion and the right to receive it at the homes, when held inviolate, assure the continuation of progress and democratic institutions. It is manifest that the ordinance seeks to destroy a long-established and time-honored custom of summoning the householder to the door. That which is reasonable and lawful the City of Struthers has no right to declare unlawful and a nuisance. The ordinance is out of accord with the general custom, practice and law of the land and works confusion in the relationship of individuals and neighbors and is not within the scope of the reasonable police power of the state.

It is therefore respectfully submitted that the judgment of the court below should be reversed and the cause remanded with instructions to dismiss the complaint and that appellant be awarded all costs incurred.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 238.

THELMA MARTIN,

Appellant;

vs.

CITY OF STRUTHERS, OHIO,

Appellee.

Appeal from the Supreme Court of Ohio.

APPELLEE'S BRIEF.

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INDEX.

Cases and Authorities Cited.

Supreme Court of the United States

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No. 238.

THELMA MARTIN,

Appellant,

vs.

CITY OF STRUTHERS, OHIO,

Appellee.

APPELLEE'S BRIEF.

STATEMENT OF FACTS.

On the afternoon of July 7, 1940, the appellant visited the home of Albert Charles Swartlander, 724 Creed street in the city of Struthers, Ohio, for the purpose of distributing literature and soliciting certain funds. The facts adduced at the time of the trial in the mayor's

court in the city of Struthers, Ohio, also showed that the appellant was a member of a group known as Jehovah's Witnesses. This particular group made it a practice of visiting the city of Struthers, Ohio, once or twice or three times a week, especially on Sunday mornings, and in the early afternoon of the same day, and possibly during the week once or twice. These visits, which were repeated regularly, aroused the citizens of the city of Struthers, Ohio, and caused them to protest and to request the police department to grant them some form of relief by curtailing their activities. Most of the complaints were based upon the element of disturbance and annoyance which came about because of these repeated visits. In an honest and sincere effort to answer and carry out the various complaints which the citizens of the city of Struthers, Ohio, made, the police invoked and applied the ordinance in question, to wit, Section 41 of Chapter 21 of the ordinances of the city of Struthers, Ohio, which ordinance reads as follows:

> "It is unlawful for any person distributing handbills, circulars, or other advertisements, to ring the doorbell, sound the door knocker, or otherwise summon the inmate, or inmates, of any residence to the door for the purpose of receiving such handbills, circulars, or other advertisements, they, or any person with them, may be distributing."

The appellant was given a hearing before the mayor of the city of Struthers, Ohio, and was properly represented by counsel. After introduction of all the evidence, the mayor found the appellant guilty. An appeal was taken from this conviction to the Court of Common Pleas, and upon appeal the case was heard before Honorable Erskine Maiden, judge of the Court of

Common Pleas of Mahoning county, Ohio, and the conviction was sustained and confirmed. An appeal was then taken to the Court of Appeals of the Seventh District of the state of Ohio, and the Court of Appeals sustained the decision of the Court of Common Pleas. This particular decision was likewise appealed to the Supreme Court of the state of Ohio, which appeal was dismissed upon a writ to certify, upon the basis that no constitutional question was involved, after which then the appellant perfected her appeal to the Supreme Court of the United States, which court held that the constitutional question was not properly presented in the state courts, therefore the court had no jurisdiction in the matter, and a mandate from the Supreme Court of the United States was directed to the state courts and the appellant paid her fine and the case was closed. Then the Supreme Court of the United States, upon its own motion on the eighth day of February, 1943, noted proper jurisdiction, without a written opinion and without any argument or without notification of counsel for the appellee.

Counsel for the city of Struthers, Ohio, state to the court that the appellant, Thelma Martin, was one of a group who invaded the city of Struthers on the day in question. The term "invaded" is used because carloads of individuals professing to belong to her group concentrated their efforts upon various sections of the city for the purpose outlined above. It must further be remembered that the ordinance in question makes no exceptions, but covers all types of distributors and solicitors. It must further be remembered that it is purely regulatory in character, and not prohibitive. Most important of all,

it must be kept in mind that no case stands on record that is similar to the case at bar. Practically all ordinances governing the distribution of literature and pamphleteering throughout the United States either require the issuance of a permit, or prohibit the practice in its entirety. The police measure in question does not prohibit, but merely regulates. It is a reasonable police regulation exercised by the city of Struthers in conformance to the delegated powers granted it by Article 18, Section 3 of the Constitution of the state of Ohio.

I.

The ordinance in question, Section 41, Chapter 21 of the ordinances of the city of Struthers, Ohio, which reads as follows:

> "It is unlawful for any person distributing handbills, circulars, or other advertisements, to ring the doorbell, sound the door knocker, or otherwise summon the inmate, or inmates, of any residence to the door for the purpose of receiving such handbills, circulars, or other advertisements, they, or any person with them, may be distributing"

answers the purpose of protecting the quiet enjoyment of the home makers, and the mere fact that some person wishes to violate it by distributing literature and soliciting donations, should not exclude that solicitor from the application and operation of the ordinance.

ARGUMENT.

It must be remembered that the ordinance emanates from an industrial community where men work in the steel mills. This industrial area, centered around the production of steel, maintains in its plant a "swing turn." That is, men work from 8:00 a. m. to 4:00 p. m., 4:00 p. m. to midnight and from midnight till 8:00 a. m. Most of the complaints in Struthers, Ohio, arose from the fact that men who have returned from the midnight to 8:00 a. m. turn would retire for a day's rest. The other immediate members of the family would go to church. Then our complaint would result by virtue of the fact that the defendant in question would rap on the door or ring the doorbell for such a length of time that the tired worker would have to answer the knock. This abuse repeated at regular intervals would necessitate regulation.

It is a primary comfort in the American way of life that the American public enjoys the privilege and right of "sleeping in" on their day of rest. The disturbances created by the intrusions of the defendant and others belonging to her group made it imperative that the city of Struthers, Ohio, invoke the regulatory measure now before the court.

In **Vol. II Cooley's Constitutional Limitations**, at page 1226, we note:

> "We hold that the police power of a state embraces regulations designed to promote the public convenience or the general prosperity as well as

regulations designed to promote the public health, the public morals, or the public safety."

On that same page we find this quotation:

"It may be said in a general way that the police power extends to all the great public needs."

Chicago, Burlington & Quincy Railway Company v. Illinois, 200 U. S., 561-592:

"In that case we rejected the view that the police power cannot be exercised for the general well-being of the community. That power, we said embraces regulations designed to promote the public convenience, or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety.

All persons agree that to the well-being of society, periods of rest are absolutely necessary. To be productive of the required advantage, these periods must recur at stated intervals, so that the mass of which the community is composed may enjoy a respite from labor at the same time."

Bloom v. Richards, 20 S., 393.

This practice of annoying people is merely regulated by the ordinance. The ordinance stands on a reasonable basis of not prohibiting the distribution in its entirety; it merely regulates the conduct of the distributor and prescribes the manner in which it can be carried on.

Another way in which this police measure protects the public is evident when it prevents the defendant or distributor from forcing his views upon the householder. As individuals enjoying inalienable rights, each man has the right to reach his own conclusions without having someone intrude into his domestic circle to dictate when, where, or to what God its inmates shall address their

orisons. Can it not be said that this practice of calling upon householders is virtually a mandate to the householder to come to the door and give audience to one who professes to be engaged in the propagation of a sacred enterprise? If sanctioned, this practice would create an inequality of right and privilege. It would result in compulsory support of religious instruction. This phase of American life must be voluntary.

The measure in question is protection for the householder against unjustifiable vexation and harassment incident to repeated visits by the appellant and her group. It does not prohibit the practice, but merely regulates it. Householders have been patient and their present attitude indicates that the advantages which distributors or callers once brought them have long since been outweighed by detriments.

Vol. 31 Michigan Law Review, page 543.

Appellant stresses the fact that the right to call upon people results from implied invitation. The implied invitation is removed by the terms of the ordinance the moment the appellant tried to summon the inmate of the home to the door.

McCormick v. City of Montrose, 90 Pac. Rep. (2d Series), at page 974:

> "The ordinance here in question has this effect. It abolishes the presumption of an implied consent from a custom that may have existed for solicitors to enter upon premises uninvited and a failure of the householders to take affirmative action, as by placing on or near the entrance a sign that solicitors are not allowed, and creates a presumption of lack of consent to go upon the premises unless an invitation can be shown."

The ordinance of Struthers, Ohio, does not bar distribution. It merely regulates, and by its regulation it preserves the general weil-being of the community.

It must be remembered that the appellant was one of a large group. The community on the morning in question was flooded by people who professed to be engaged in a special calling. The practical application of the ordinance was not invoked because of an isolated case; it proved itself as a regulatory measure geared to prevent such unwarranted invasions. If the appellant merely sought to distribute and not summon the inmates of the household, the clash between the police measure and her calling would not have happened:

Reynolds v. U. S., 98 U. S. Rep., 145:

"A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land."

At page 166:

"Laws are made for the government of actions and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifice were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pyre of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So, here as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the pro-

fessed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Davis v. Beason, 133 U. S. Rep., at pages 342-343:

"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for His being and character and obedience to His will. It is often confounded with the cultus, or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the Constitution in declaring that Congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets or the modes of worship of any sect. The oppressive measures adopted and the cruelties and punishments inflicted by the governments of Europe for many ages to compel parties to conform in their religious beliefs and modes of worship to the views of the most numerous sect and the folly of attempting in that way to control the mental operations of persons and enforce an outward conformity to a prescribed standard led to the adoption of the amendment in question. **It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the beliefs, good order and morals of society.** With man's relations to his Maker, and the obligations he may think they impose and the manner in which an expression shall be made by him of his belief on those subjects, no

interference can be permitted, provided always the laws of society designed to secure its peace and prosperity and the morals of its people are not interfered with. **However free the exercise of religion may be, it must be subordinate to the criminal laws of the country passed with reference to actions regarded by general consent as properly the subject of punitive legislation.**" (Emphasis ours.)

"Presumably, when a legislative act is passed it represents the sentiment and expresses the judgment of a majority of the citizens within the legislating governmental division or subdivision that passes the act as to the proper policy to be pursued with reference to the subject of the legislation."

McCormick v. City of Montrose, 99 Pac. (2d Series), at page 974.

The practice aimed at by the ordinance in question has been annoying to home occupants, resulting in a great deal of inconvenience, irritableness and discomfort to persons who each week or possibly twice and three times a week are summoned to the call of one who delivers the same message.

Overruling this measure would subrogate the privacy of a home and elevate the right to call on people at any time and without invitation. The household would not be a safeguard against intrusions. As it now stands, the right to distribute is kept intact but the mode of doing it is regulated. This police measure preserves the quietness of home life against intrusions, unexpected calls and uninvited guests.

II.

The police measure is a reasonable exercise of the police powers and not arbitrary, discriminatory or op-

pressive, and furthermore it regulates the conduct of individuals classed under the law as "trespassers."

Under Ohio law the appellant is classed as a trespasser, **Keesecker v. G. M. McKelvey Company**, 64 O. A., at page 29. The element of trespass has certainly given the legislative authorities the right, power and authority to legislate upon that practice. This same principle is set out in the **Restatement of the Law of Torts**, page 891, Section 329:

> "One who intentionally and without a consensual or other privilege, enters the land in possession of another, or any part thereof, or causes a thing or third person so to do, or remains thereon, is classed as a trespasser."

The ordinance does not prohibit pamphleteering. It regulates its distribution in private places. Some of the measures which tended to control this type of practice, enable the exercise of censorship by delegating to one party the right to refuse a permit. The measure in question does not contain such a delegation.

The real distinction attributed this ordinance is based on the fact that the numerous cases dealing with house to house canvassing fail to bring to light a measure so lax in its scope of regulation. **People v. Bohuke**, 287 N. Y.; 154, cites an ordinance somewhat similar to the one in question. The court in that case held:

> "That the ordinance does not infringe any of appellants' rights to the free exercise of their religion since it merely regulates their entry onto private property for the purpose of promoting their religious belief * * * the Constitution does not guarantee them any right to go freely onto private property for such purposes."

Counsel for appellant cites the case of **Zimmerman v. Village of London, Ohio,** 38 Fed. Supp., 582, as bearing upon our problem, but he fails entirely to give this court two major distinctions, namely the ordinance in the village of London case prohibited the practice of distribution entirely, whereas the ordinance of the city of Struthers, Ohio, regulates the practice of distribution. Furthermore, the court, in its opinion on page 584, recognizes the right of regulation, to wit:

> "Democracy rests upon the theory that all men are possessed of certain inalienable rights; these rights, if democracy is to survive, must be based upon mutual tolerance and understanding. They give to no class or group the right to dictate to another what his opinions or belief shall be. The right to entertain and express views does not carry with it the right to force personal views upon others, and vociferous minorities may be as guilty of this unconstitutional and undemocratic usurpation of fundamental rights as organized government, and perhaps such conduct on the part of groups and individuals is the more reprehensible because it cannot be as effectively dealt with as the same sort of action on the part of governmental authority."

In the light of the foregoing distinction and brief opinion as rendered by the court, counsel for the city of Struthers sincerely requests the court to weigh the abuses which appellant would perpetuate, if not regulated by our police measure.

III.

The ordinance in question does not prohibit the distribution of literature, but merely regulates such conduct. It does not abridge the right of worship, since it fails to differentiate various classes or groups; it does

not transgress or violate the right of freedom of the press and speech, since distribution is permitted.

It is regrettable to note that this measure is assailed as being totalitarian in nature. The appellant can print any leaflet or impart any and all forms of information into a pamphlet or into a leaflet or into a booklet and then distribute this particular type of literature, without being hampered or molested by virtue of this ordinance. The information or knowledge which is printed or contained in the various pamphlets can be freely disseminated and the information can be distributed without censorship or without the requiring of a license. Can it be said that this particular ordinance constitutes an abridgment of the rights of freedom of the press and speech? The ordinance comes into play only when the householder is disturbed. The appellant and others in her group had a two-fold mission to carry out on the day in question, namely distribution and solicitation. This practice of solicitation is destroyed by the regulation or ordinance in question, and that is the chief complaint of the appellant. Counsel for appellant state that these leaflets are distributed without price. That statement must be qualified, for it is customary for the appellant and others belonging to her group to seek and request a donation from every household which they visit.

The courts of the state of Ohio have passed on this issue and they have concluded that the measure which now is facing the Supreme Court of the United States, was a reasonable exercise of the police powers.

To substantiate our position that the ordinance in question is a valid exercise of the police power, the law of Ohio pertaining to this particular subject-matter of

handbill regulation is contained in the case of **Lewis v. Washington**, 27 Abs., page 396. Plaintiff in the Washington case, claimed that he was the owner and operator of a retail grocery and meat store, and for several years past advertised his business and merchandise which he offered for sale to the public, by newspapers and by distributing small handbills each week from house to house in said city; that in the lawful pursuit of his business he had caused the handbills to be neatly folded and once each week had distributed one at the dors of the several dwelling houses of the city; that the city of Washington passed an ordinance and that by reason thereof he would not be able to advertise his business by passing handbills from house to house. He claimed that the ordinance was unreasonably discriminatory and oppressive and that since its effective date plaintiff had been hindered in the operation of his business and had suffered loss; that enforcement resulted in an infringement of his property rights and that the ordinance was violative of the federal and state Constitutions and of the statutes of Ohio. The language of the ordinance is as follows:

> "Section I. That the passing of handbills and other advertising matter of any kind from house to house in the city of Washington is an injury, a fire hazard and an annoyance to the public and the same is hereby declared to be a public nuisance.
>
> Section II. That for the protection of the public health, peace, safety and morals it shall be unlawful for any person, firm or corporation to pass handbills or distribute from house to house in any manner whatever, any advertising matter."

While it may be true that some of his customers have complained that they did not receive their weekly in-

formation about the wares that he had for sale, and other information furnished by the bills, **yet there are many other citizens who may feel relieved** because their premises are not used for the deposit of undesired advertisements.

The measure in question is not as severe as the ordinance which was upheld by the Court of Appeals in the Lewis v. Washington case. Therefore it can be rightfully concluded that the city of Struthers' ordinance is a valid exercise of the police powers.

Counsel for appellee cite the case of **Erie Railroad Company v. Tompkins**, 304 U. S., at page 67:

> "As a matter of comity at least, and by virtue of the Rules of Decision Act, as well, the federal courts are bound to recognize an asserted rule of state law where the evidence in the form of state decisions is sufficiently conclusive, in other words, when the asserted rule is established with sufficient definiteness and finality."

In the light of the Ohio decisions and in the light of the interpretation placed upon the ordinance in question by the Ohio courts, appellee urges the Supreme Court of the United States to consider the "well being" and community welfare features which the police measure preserves and keeps intact.

There are numerous decisions throughout the various states of the Union, which decisions enunciate the rule that municipalities have the right to pass police measures to regulate the distribution of handbills and literature. A series of these cases, with excerpts will be cited to conclude appellee's brief, starting with the case of **Town of Green River v. Bunger**, 58 Pac. Rep., 456:

> "The practice of going in and upon private resi-

dences in the town of Green River, Wyoming, by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise not having been requested or invited so to do by the owner, or owners, occupant or occupants, of said private residences, for the purpose of soliciting orders for the sale of goods, wares or merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance, and punishable as such as a misdemeanor."

The defendant in the Green River case was hired as a Fuller brush salesman, by the Fuller Brush Company. His actions and activities were parallel to the activities carried on by the appellant in the case at bar, and yet the court held that the police measure enacted to regulate such practices was reasonable.

In a federal case found in 65 Fed. (2d), 112, and known as the case of **The Town of Green River v. Fuller Brush Company**, it was held as follows:

"Town held to have statutory authority to declare what constitutes a nuisance, to prevent and abate nuisances, and to inflict punishment on violators of ordinances relating to nuisances."

The practice described in the above-mentioned case was peaceful, yet the court held it to be a nuisance subject to regulation by proper police powers.

Another case, which contains an entire treatise on the issue confronting this court, is found in 99 Pac., 969, at page 976, wherein the following statement is made by the court:

"To sustain the ordinance (an ordinance somewhat similar to the one under discussion,) we think it unnecessary to decide that the practice which it denounces is a nuisance. The declaration to that

effect shows, however, that the purpose of the ordinance is to prevent disturbance and annoyance, the important elements of nuisance. And if the ordinance is a legitimate exercise of the power of the town to prevent disturbances, under subdivision 12 of Section 22-1427, supra, it ought not to be held invalid because it erroneously applied the term 'nuisance' to the forbidden conduct."

Another case which is directly associated with the case now being tried is found in 169 Atl., page 344, known as **Allen v. McGovern.** In this case Nelson Allen was convicted of violating an ordinance of Jersey City prohibiting distribution of unsolicited advertising matter to householders. The ordinance under which the above party was convicted was as follows:

"No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed in any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by the person in actual occupation of the house, in the areaway of which, in front of which, or along the side or doorstep of which said newspaper, paper, periodical, book, magazine, circular, card, or pamphlet shall be distributed or placed."

Under the facts in this case, the convicted party had called at a private residence and delivered an unsolicited advertising circular to the occupant. The court held:

"That the Legislature has delegated to the municipality the duty to preserve the public peace and good order.

There is also the power to regulate the ringing of bells and crying of goods. City life is very complex. There can be no doubt that the city can

prevent the misuse of the streets. But can it prevent the distribution to householders of unsolicited advertising matter? **We think it can.**

The records in this case demonstrate that the municipality had reasonable cause to believe that the unsolicited distribution of the advertising mediums named in the ordinance was detrimental to the public peace and good order. By so doing the city has not violated the organic law. It has not deprived advertisers of the opportunity to advertise their goods or to approach possible customers: All that it has prohibited is the unsolicited distribution of books and papers among householders. Ordinances have been long upheld as within the police power when the design was to prevent the cluttering of the streets and the frightening of horses. The fact that the prosecutor (meaning the defendant) first rang the doorbell and then handed in the unsolicited advertising matter does not alter the situation, since the city must regulate the use of its streets for the good of the greatest number. There are restraints upon everyone for the common good. The city commissioners, being familiar with the local conditions, are primarily the judges of the necessity.

Jacobson v. Mass., 197 U. S., 11.

There can be no question that the city could exclude beggars, peddlers and panhandlers from its streets, and the mere circumstance that these persons should adopt the doorbell method of approach would in no sense enlarge their rights. It seems to us that therefore the ordinance, in so far as it prohibits the unsolicited distribution of papers, magazines, advertising matters, and other articles mentioned in it, violates no constitutional privilege."

At the outset the court must remember that the ordinance does not place a restriction upon the distribution of literature and handbills. The "Witnesses" may go

from porch to porch and house to house and place their pamphlets on the porches without ringing the bell or summoning the party living in the premises to the door.

Other cases bearing on the above point are found in:

Coleman v. City of Griffin, 189 S. E., 427;
Bayley v. Garrison, 190 Cal., 690, 214 Pac., 871;
San Francisco News Co. v. City of South San Francisco, 69 Fed: (2d), 886;
Jell-O Company v. Brown, Mayor, 3 Fed. Supp., 132;
Dziatkiewicz v. Township of Maplewood, 178 Atl., 205.

CONCLUSION.

The ordinance under discussion does not bar distribution from house to house, but it merely prohibits the distribution thereof by ringing doorbells and otherwise summoning the occupants of the household to the door for the purpose of receiving circulars, handbills, etc. This was intended possibly to control a condition or a nuisance which surrounds the distribution of pamphlets. All persons are treated alike and are subject to the same restrictions. Therefore, no constitutional clause of the state Constitution or of the federal Constitution has any part to pay in this case. The case of **Dziatkiewicz v. Township of Maplewood**, 178 Atl., 205, Syllabus 7:

> "Township ordinances prohibiting canvassing, soliciting or distributing of circulars or other matter without permit held not invalid or unreasonable when applied to persons engaged in the furthering their religious principles through spreading their religious conceptions to the public and such persons were not immune to such police regulation."

The opinion of the court as contained on page 208 of the above-mentioned case may have a bearing on the issues involved, to wit:

> "It would seem to this court that men and women engaged in the lofty and idealistic work as the prosecutors claim to have been engaged herein, i. e. of spreading their religious conceptions to the public at large, ought to be among the very first to submit to and comply with all reasonable regulations, which, obviously, were enacted in the interest of the public health."

Furthermore, it can safely be said that this ordinance s a mere regulatory measure intended to promote ommunity welfare, benefiting the community at large nd not creating a hardship for anyone or any group of ndividuals. It must be remembered that the ordinance loes not prohibit distribution, but it tends to define the ourse which one must follow while distributing the iterature or pamphlets throughout the municipal limits f the city of Struthers.

Wherefore, this appellee contends and urges the court o uphold the convictions and decisions of the lower ourts by sustaining the ordinance in question.

Respectfully submitted,

DAVID C. HAYNES,

T. T. MACEJKO,

City Bank Bldg., Youngstown, Ohio,

Attorneys for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1942

No. 238

THELMA MARTIN,

Appellant,

against

CITY OF STRUTHERS, OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *Amicus Curiae*

IN OPPOSITION TO THE JUDGMENT AND DECISION OF THE SUPREME COURT OF OHIO HEREWITH APPEALED FROM

DOROTHY KENYON,
On Behalf of
American Civil Liberties Union,
Amicus Curiae.

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TABLE OF CONTENTS

CITATIONS

Cases

Ordinance

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1942

No. 238

THELMA MARTIN,

Appellant,

against

CITY OF STRUTHERS, OHIO,

Appellee.

Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court:

The undersigned, as counsel for the American Civil Liberties Union respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the appellant to the filing of this brief has been obtained. Attorney for the appellee has failed and refuses to grant his consent.

Special reasons in support of this motion are set out in the accompanying brief.

March 10, 1943.

DOROTHY KENYON,
On Behalf of
American Civil Liberties Union,
Amicus Curiae.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1942

No. 238

THELMA MARTIN,

Appellant,

against

CITY OF STRUTHERS, OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *Amicus Curiae*

Preliminary Statement

The American Civil Liberties Union herewith files its brief *amicus curiae* upon the hearing of the above entitled appeal in opposition to the judgment and decision of the Supreme Court of the State of Ohio herewith appealed from.

The American Civil Liberties Union, a non-partisan, non-sectarian organization, with a membership of thousands of persons in all the states of the Union, including Ohio, has for the last twenty years or more endeavored to carry out its objects as stated in its charter, namely, "to maintain throughout the United States and its possessions the rights of free speech, free press, free assemblage

and other civil rights and to take all legitimate action in furtherance of such purposes". In pursuance of these objects it has fought invasions of civil liberties wherever it has found them, has defended in the courts those whose civil rights it believed to be invaded and has appeared as *amicus curiae* in hundreds of cases involving issues of civil liberties.

In the opinion of the American Civil Liberties Union the preservation of the rights of free speech and free press requires that there should be no prohibition or limitation prohibitive in effect upon the distribution of ideas, whether by sales or by free distribution of printed matter and whether in public places or from house to house. Personal house to house distribution of pamphlets, leaflets, handbills and other papers is as essentially an exercise of the right of freedom of the press and of expression generally as is the publication and distribution of newspapers and periodicals, whether through the mails or over the newsstands, and as is the dissemination of ideas by word of mouth, by personal conversations, at meetings or over the radio. Unrestricted personal distribution of this nature serves a vital democratic need. Not all of us who have thoughts and ideas which we desire to express to others, whether to a large or small audience, can broadcast them over the radio or on the pages of the great dailies. What is available to most of us is personal contact with our neighbors and fellows.

Pamphlets have played a glorious role in the history of the development of ideas. The competition of ideas in the market-place is seen at its best in pamphleteering. One of the greatest roles in the early struggles of this country against despotism, in the establishment of this nation and in the formation of our democratic form of

government, was played by persons now known as the "Pamphleteers". Tom Paine, Thomas Jefferson, Samuel Adams, Alexander Hamilton, James Madison, John Jay, and others whose name is legion, wrote the philosophy and provided the ideology underlying the Declaration of Independence, our war for freedom, the Constitution of the United States and the Bill of Rights itself. Pamphlets, handbills, leaflets, without these it is hard to visualize how we could ever have attained that unity in freedom which we all prize and love so well.

This precious right, the right to pamphleteer, must never be destroyed.

It is because of our devotion to this principle of freedom that we file this brief today. None of the governing body of the Union are members of Jehovah's Witnesses nor do they share the religious convictions of that group.

Statement of Facts

This appeal is from a judgment and decision of the Supreme Court of Ohio rendered and entered on February 4, 1942, confirming a judgment of conviction by the Mayor's Court of the City of Struthers, Ohio, for an alleged violation by appellant of an Ordinance of said City.

The Ordinance, known as *Section 41 of Chapter 21 of Ordinances of the City of Struthers,* reads as follows:

> "It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them are distributed."

Violation of the Ordinance is punishable by fine.

The facts themselves are simple and undisputed. Appellant, a member of a religious group known as Jehovah's Witnesses, knocked on the door of a home in the City of Struthers, asked the young son of the household who came to the door in response to her knock for his mother, offered booklets to the mother when she appeared at the door, and then, after asking her aid in securing the release of certain others of Jehovah's Witnesses, including five children, who had been previously arrested by the City authorities, handed her a leaflet advertising a meeting of the group to be held on a succeeding Sunday afternoon in Columbus, Ohio. The lady of the house refused the booklets remarking that she was not interested; she took the leaflet, however, and glanced over it after which she tore it up and threw it away. Appellant then left the premises and was immediately arrested by a police officer who drew up in his car at the gate just as she was going out. The entire conversation between appellant and the householder was amicable, orderly and without incident. For this appellant was convicted under the Ordinance and fined.

I.

The City Ordinance in question is repugnant to the Fourteenth Amendment to the Constitution of the United States and is unconstitutional and void because in violation of freedom of speech, press and religion and of due process of law as therein guaranteed.

A.

The Ordinance as applied to the facts of this case violates the constitutional rights of freedom of speech, press and religion.

It is well-settled law that freedom of speech, press and

the Fourteenth Amendment to the Constitution of the United States. (*Meyer* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Hamilton* v. *Regents of University of California*, 293 U. S. 245; *Cantwell* v. *Connecticut*, 310 U. S. 296.) Municipal ordinances are also included "within the prohibition of the amendment". (*Lovell* v. *Griffin*, 303 U. S. 444.)

It is equally well-settled law that freedom of the press includes not only publication but distribution as well. (*Lovell* v. *Griffin*, *supra*.)

Distribution of pamphlets at the homes of the people is one of the most effective ways of calling attention to them.

> "Pamphlets have proved most effective instruments in dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people". (*Schneider* v. *Irvington*, 308 U. S. 147)

> "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place". (*Schneider* v. *Irvington*, 308 U. S. 147)

Applying these principles to the ordinance in question it is respectfully submitted that a regulation which attempts, as does the ordinance in question, to impose a flat prohibition upon manual distribution of pamphlets at people's homes (particularly where no money is asked and the pamphlets are wholly non-commercial in character) is of necessity violative of the Fourteenth Amendment to the Constitution.

It is true that several ordinances dealing with the field of home distribution have recently been upheld. Each one has been justified on the ground that it deals with

only a few of the many possible contacts between people in their homes and the individuals who seek to communicate with them, that other channels of communication with people in their homes remain open and that the bar therefore is not absolute.

Thus *San Francisco News Co.* v. *City of South San Francisco* (69 Fed. 2nd 879), an ordinance forbidding throwaways of handbills in automobiles, yards, porches or mailboxes was held valid by the Federal Circuit Court of Appeals in part at least because of the fact that the prohibition was not absolute since it did not "forbid the manual delivery of the publication by the carrier to a member of the household". (See also in this connection *Bohnke* v. *People,* No. 1005 Oct. T. 1941, certiorari denied, 316 U. S. 667; rehearing denied, 316 U. S. 713, where the ordinance in question forbade entry upon private property for the purpose of distributing handbills except with prior consent.) Following the line of reasoning of the *San Francisco News Co.* case the ordinance in the case at bar might conceivably be upheld upon the ground that, while it manifestly *does* forbid manual delivery to a person summoned to the door of his home for the purpose, it nevertheless just as manifestly does *not* prohibit throwaways without doorbell summonses. Thus what one ordinance permits the other forbids and each in its field may conceivably be constitutional.

Another type of ordinance recently upheld by this court (*Jones* v. *Opelika,* 316 U. S. 584, rehearing granted 87 Law Ed. 515 (Adv. Sheets)) constitutes still another whittling away of this essential constitutional right of freedom of communication with persons in their homes in a democracy. By requiring the taking out of a license before pamphlets can be distributed, either at people's homes or in the street, still another barrier has been interposed to freedom of communication.

The sum total of all such ordinances is a constantly narrowing field of communication. Thus it is forbidden now in certain states to distribute handbills at people's homes without prior consent (the *Bohnke* case), to throw handbills on their lawns or put them in their automobiles (the *San Francisco News Co.* case), to ring doorbells and offer handbills to them (the case at bar), or to do all this without a license (the *Jones* v. *Opelika* case). The effect of all these ordinances is cumulative. For as one means of communication is closed and another one is resorted to that too is likely to become unpopular and to fall under the ban. Thus rights get whittled away bit by bit until the valuable substance is all but gone. The whole thing is a slow process of attrition, the wearing away of essential rights. The question arises, at what points will the line be drawn and which of these varying types of ordinance will be found constitutional, since obviously not all can be so found without closing all feasible channels of communication.

This particular ordinance is perhaps not in itself of great importance or significance. But it is like one of those drops of water which over the ages have driven a fissure and then a deep canyon between two parts of what was once a broad and indivisible plain. Communication is as effectively severed by a multitude of drops of this sort as by an earthquake.

Nor should we minimize the extent of the injury done in this case. In *People* v. *Barber* (289 N. Y. 378), a licensing ordinance case similar on its facts to the *Jones* v. *Opelika* case (*supra*), the court, in reversing the conviction obtained in the lower court, concluded by quoting from the brief filed as *amicus* by the Committee on Civil Rights of the New York State Bar Association, the Com-

mittee on the Bill of Rights of the Association of the Bar of the City of New York and the Committee on Civil Rights of the New York County Lawyers Association, as follows:

> "It may seem to some that appellant's activities were of such a character that, at this critical period in world history, the Courts and the Bar need not be particularly concerned with their repression. But, if appellant's activities involved the exercise by him of fundamental rights guaranteed by the Federal and State Constitutions, the violation of those rights cannot be disregarded as of trivial consequence. Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever before, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life".

The need of keeping channels of communication open, especially for obscure and unpopular minority groups, becomes more rather than less important as time goes by. The rich and powerful have many channels of communication denied to those less favorably situated. Neighbor to neighbor grass roots contacts are essential if democracy is to survive. And these must be two-way contacts, that is to say, there must be an opportunity to listen as well as to speak, to read as well as to write. Insofar as this ordinance and others like it set up barriers to these contacts they stifle freedom of communication and prevent the free dissemination of ideas.

It is submitted, therefore, that this ordinance as interpreted by the Supreme Court of the State of Ohio as applicable to the facts of this case is unconstitutional be-

cause in violation of the constitutional guarantees of free speech, free press and freedom of religion.

B.

The ordinance is an unwarranted and unreasonable exercise of the police power, being prohibitory and not regulatory in nature, and not being justified by any existing danger or emergency, and it is therefore in its application to pamphlet distributors unconstitutional and void.

The ordinance does not attempt to regulate door to door manual distribution in any way. On its face it is a flat prohibition of any door to door manual distribution of pamphlets whatever. No exceptions are granted. The rule is absolute. Anyone who knocks and delivers is thereby made a criminal. This is not that "free and unhampered distribution of pamphlets" which the Supreme Court (in *Lovell* v. *Griffin, supra*) has declared essential to the maintenance of constitutional rights. Rather "it imposes what amounts to a virtual prohibition upon such distribution" (*Zimmerman* v. *Village of London, Ohio,* 38 Fed. Supp. 582). This is clearly arbitrary and unreasonable.

Nor does the prohibition appear justified by any existing danger or emergency. Whatever the reasons for the ordinance, whether to guard against thieves, secure privacy, avoid annoyance, littering or fire-hazards, none of these possible reasons appears compelling enough to justify suppression of free speech. As Justice Brandeis has said (*Whitney* v. *California,* 274 U. S. 357):

> "To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger

apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. * * * Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom."

See also:

Bridges v. *California,* 314 U. S. 252.

SUMMARY

The ordinance, therefore, insofar as it be deemed applicable to door to door manual distribution of non-commercial pamphlets, is justified by no danger or emergency sufficiency great or imminent to require such curtailment of the rights of free speech and press, it is therefore wholly unreasonable and, since it has the inevitable effect of seriously interfering with the speech, press and religious activities and practices of Jehovah's Witnesses and other pamphleteers, it constitutes a serious abridgment of the constitutional rights of freedom of speech, press and religion.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

Dorothy Kenyon,
On Behalf of
American Civil Liberties Union
Amicus Curiae.

Dated March 9, 1943.

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SUPREME COURT OF THE UNITED STATES.

No. 238.—October Term, 1942.

Thelma Martin, Appellant, *vs.* City of Struthers, Ohio.	On Appeal from the Supreme Court of the State of Ohio.

[May 3, 1943.]

Mr. Justice Black delivered the opinion of the Court.

For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistently with the federal Constitution's guarantee of free speech and press, possesses this power.[1]

The appellant, espousing a religious cause in which she was interested—that of the Jehovah's Witnesses—went to the homes of strangers, knocking on doors and ringing doorbells in order to distribute to the inmates of the homes leaflets advertising a religious meeting. In doing so, she proceeded in a conventional and orderly fashion. For delivering a leaflet to the inmate of a home she was convicted in the Mayor's Court and was fined $10.00 on a charge of violating the following City ordinance:

"It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them may be distributing."

[1] This ordinance was not directed solely at commercial advertising. Cf. Valentine v. Chrestensen, 316 U. S. 52; Town of Green River v. Fuller Brush Co., 65 F. 2d 112. Compare for possible different results under state constitutions Prior v. White, 132 Fla. 1; Orangeburg v. Farmer, 181 S. C. 143.

The appellant admitted knocking at the door for the purpose of delivering the invitation, but seasonably urged in the lower Ohio state court that the ordinance as construed and applied was beyond the power of the State because in violation of the right of freedom of press and religion as guaranteed by the First and Fourteenth Amendments.[2]

The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.[3] This freedom embraces the right to distribute literature, *Lovell* v. *Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Schneider* v. *State*, 308 U. S. 147, 162. Yet the peace, good order, and comfort of the community may imperatively require regulation of the time, place, and manner of distribution. *Cantwell* v. *Connecticut*, 310 U. S. 296, 304. No one supposes, for example, that a city need permit a man with a communicable disease to distribute leaflets on the street or to homes, or that the First Amendment prohibits a state from preventing the distribution of leaflets in a church against the will of the church authorities.

We are faced in the instant case with the necessity of weighing the conflicting interests of the appellant in the civil rights she claims, as well as the right of the individual householder to determine whether he is willing to receive her message, against the interest of the community which by this ordinance offers to protect the interests of all of its citizens, whether particular citizens want that protection or not. The ordinance does not control anything but the distribution of literature, and in that respect it substitutes

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[2] The appellant's judgment of conviction was appealed to the Supreme Court of Ohio which dismissed the appeal on the stated ground that: "No debatable constitutional question is involved." We at first dismissed the appeal, thinking that the Supreme Court of Ohio meant that no constitutional question had been properly raised in accordance with Ohio procedure. Upon reconsideration we concluded that since a constitutional question had been presented in the lower State court, the language of the Order of the Supreme Court of Ohio should be construed as a decision upon the constitutional question.

[3] "The only security of all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, Writings of Thomas Jefferson, Washington ed., v. 7, p. 325.

the judgment of the community for the judgment of the individual householder. It submits the distributer to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it. In considering legislation which thus limits the dissemination of knowledge, we must "be astute to examine the effect of the challenged legislation" and must "weigh the circumstances and . . . appraise the substantiality of the reasons advanced in support of the regulation." *Schneider* v. *State, supra,* 161.

Ordinances of the sort now before us may be aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or railroad yard which zoning ordinances may prohibit. In the instant case, for example, it is clear from the record that the householder to whom the appellant gave the leaflet which led to her arrest was more irritated than pleased with her visitor. The City, which is an industrial community most of whose residents are engaged in the iron and steel industry,[4] has vigorously argued that its inhabitants frequently work on swing shifts, working nights and sleeping days so that casual bell pushers might seriously interfere with the hours of sleep although they call at high noon. In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later.[5] Crime prevention may thus be the purpose of regulatory ordinances.

While door to door distributers of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread use of this method of communication by many groups es-

[4] 16th Census, "Population—2d Series—Ohio", 133, 151.

[5] For a discussion of such practices see Soderman and O'Connell, Modern Criminal Investigation, chap. 13 and chap. 20; Federal Bureau of Investigation Law Enforcement Bulletin, July, 1938; 20 Public Management 83 (an analysis of the criminal records of a group of canvassers in Winnetka, Illinois). Sacramento, California, has rested a canvassing ordinance on crime prevention. In re Hartman, 25 C. A. 2d 55, and courts have been aware of this aspect of the problem in dealing with such ordinances. Allen v. McGovern, 12 N. J. Misc. 12, 13; Dziatkiewicz v. Maplewood, 115 N. J. L. 37.

pousing various causes attests its major importance. "Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people." *Schneider* v. *State, supra,* 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines,[6] and laboring groups have used it in recruiting their members.[7] The federal government, in its current war bond selling campaign, encourages groups of citizens to distribute advertisements and circulars from house to house.[8] Of, course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes.[9] Door to door distribution of circulars is essential to the poorly financed causes of little people.

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[6] Representatives of the American Tract Society, an interdenominational organization engaged in colportage since 1841, have visited over twenty-five million families. Article on "American Tract Society", 1 Encyclopedia Americana (1932 ed.) 566; Annual Reports of the American Tract Society (e. g. the 116th Report, 1941, 37-38; 117th Report, 1942, pp. 37-38); Baird, Religion in America (1856), 334-340.

See also the activities of the American Bible Society. Jones, Colportage Sketches (1883); Dwight, The Centennial History of the American Bible Society (1916), 177-81, 293-95, 460; Annual Reports of the American Bible Society (e. g., 126th Report, 1942, *passim.*).

For the world-wide colportage activities of the British and Foreign Bible Society, see the Society's 137th Report, 1941, *passim;* For Wayfaring Men, (1939), 31-78; Ritson, The World Is our Parish (1939), 116-18.

This practice has been followed by many religious groups. See, e. g., Barnes, Barnes and Stephenson, Pioneers of Light (1924), 81-104; Stevens, The First Hundred Years of the American Baptist Publication Society (1925), 30-32. During the fiscal year 1939-1940, representatives of the American Baptist Publication Society visited 52,832 families. More than six million families have been visited over a one hundred year period. Annual of Northern Baptist Convention, 1940, 671, 673; Year Book of the Northern Baptist Convention, 1942, 332-335. See for the practice of other religions, Stewart, Sheldon Jackson (1908), 32; Goodykoontz, Home Missions on the American Frontier (1939), 120-122; Keller, The Second Great Awakening in Connecticut (1942), 117-121.

[7] Lorwin and Flexner, The American Federation of Labor, 352; International Ladies Garment Workers Union, Handbook of Trade Union Methods, 10; Brooks, When Labor Organizes, chap. 1 ("Organizing a Union").

[8] "Women's Handbook", pp. 22 and 63, a publication of the Women's Section of the War Savings Staff of the Department of the Treasury; The Home Front Journal, April, 1943, p. 1, a publication of the same group; "A Program of Action for Clubs", p. 3, a publication of the Department of the Treasury. Presumably a citizen of Struthers distributing to homes the pamphlets recommended in "A Program of Action" would violate the City's ordinance.

[9] Merriam and Gosnell, The American Party System, 317 (The Canvass); Bruce, American Parties and Politics, 407; Ostogoskii, Democracy, 153-155,

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states,[10] while similar statutes of narrower scope are on the books of at least twelve states more.[11] We know of no state which, as does the Struthers ordinance in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners

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453; Pierson, In the Brush, 142 (politics in the old Southwest); Barnes, The Antislavery Impulse, 137-143 (circulation of antislavery petitions). The American Politician, ed. by J. T. Salter, 19, 235, 310, 339, and The American Political Scene, ed. by Edward Logan, 64, 150, indicate by passing references to practices in many states the extent to which the door to door canvass is a staple of political life.

For encouragement of this practice see Handbook of Club Organization, National Federation of Women's Republican Clubs (1942) 21; and Precinct Organization in War Time, a recent publication of the Democratic National Committee.

[10] Alabama Code (1940), Tit. 14, § 426; Connecticut Gen. Stat. (1930), § 6119; Florida Stat. (1941), § 821.01; Georgia Code Ann. (1938), § 26-3002; Illinois Ann. Stat. (Smith Hurd, 1935), Ch. 38, § 565; Indiana Stat. (Burns, 1934), § 10-4506; Maryland Ann. Code (Flack, 1939), Art. 27, §§ 24, 286; Massachusetts Ann. Laws (1933), v. 9, Ch. 266, § 120; Mississippi Code Ann. (1930), § 1168; Nebraska Comp. Stat. (1929), §§ 76-807,8; Nevada Comp. Laws (1929), § 10447; North Carolina Code (1943), § 14-134; Ohio Code Ann. (Throckmorton, 1940), § 12522; Oklahoma Stat. (1937), Tit. 21, § 1835; Oregon Comp. Laws Ann. (1940), §§ 23-593,4; Pennsylvania Ann. Stat. (Purdon, 1942 Supp.), v. 18, § 4954; South Carolina Code (1942), § 1190; Virginia Code (1936), § 4480a; Washington Rev. Stat. (Remington, 1932), § 2665; Wyoming Rev. Stat. (1931), § 32-337.

[11] Arkansas Stat. (Pope, 1937), § 3181; California Penal Code (Deering, 1941), §§ 602, 627; Colorado Stat. Ann. (1935), v. 3, Ch. 73, § 118; Kentucky Rev. Stat. (Baldwin, 1942), §§ 433.720, 433.490; Louisiana Gen. Stat. (Dart, 1939), § 9463; Maine Rev. Stat. (1930), Ch. 139, § 22; Minnesota Stat. (1941), § 621.57; Montana Rev. Code Ann. (1935) § 11482; New Hampshire Public Laws (1926), Ch. 380, § 11; New Jersey Rev. Stat. (1937), Tit. 4, § 17-2; New York Consol. Laws Ann. (McKinney, 1941), Conservation Law, §§ 361-364; Texas Stat. (Vernon, 1936), P. C. Art. 1377.

to stay away.[12] The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities[13] which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as to whether distributers of literature may lawfully call at a home where it belongs—with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers.[14] In any case, the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributers from the home.

The Struthers ordinance does not safeguard these constitutional rights. For this reason, and wholly aside from any other possible defects, on which we do not pass but which are suggested in other opinions filed in this case, we conclude that the ordinance is invalid because in conflict with the freedom of speech and press.

The judgment below is reversed for further proceedings not inconsistent with this opinion.

Reversed.

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12 Municipalities have occasionally made canvassers trespassers without requiring that the householder give an explicit notice, as the instant ordinance testifies. See e. g. People *v.* Bohnke, 287 N. Y. 154.

13 Municipalities and the Law in Action (1943), National Institute of Municipal Law Officers, 373. We do not, by this reference, mean to express any opinion on the wisdom or validity of the particular proposals of the Institute.

14 "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." Cantwell *v.* Connecticut, 310 U. S. 296, 306.

Mr. Justice MURPHY, concurring.

I join in the opinion of the Court, but the importance of this and the other cases involving Jehovah's Witnesses decided today, moves me to add this brief statement.

I believe that nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions. Cf. *Jones* v. *Opelika,* 316 U. S. 584 at 621. The right extends to the aggressive and disputatious as well as to the meek and acquiescent. The lesson of experience is that—with the passage of time and the interchange of ideas—organizations, once turbulent, perfervid and intolerant in their origin, mellow into tolerance and acceptance by the community, or else sink into oblivion. Religious differences are often sharp and pleaders at times resort "to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell* v. *Connecticut,* 310 U. S. 296, 310. If a religious belief has substance, it can survive criticism, heated and abusive though it may be, with the aid of truth and reason alone. By the same method those who follow false prophets are exposed. Repression has no place in this country. It is our proud achievement to have demonstrated that unity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought.

Also, few, if any, believe more strongly in the maxim, "a man's home is his castle", than I. Cf. *Goldman* v. *United States,* 316 U. S. 129 at 136. If this principle approaches a collision with religious freedom, there should be an accommodation, if at all possible, which gives appropriate recognition to both. That is, if regulation should be necessary to protect the safety and privacy of the home, an effort should be made at the same time to preserve the substance of religious freedom.

There can be no question but that appellant was engaged in a religious activity when she was going from house to house in the City of Struthers distributing circulars advertising a meeting of those of her belief. Distribution of such circulars on the streets cannot be prohibited. *Jamison* v. *Texas,* No. 588 this Term. Nor

can their distribution on the streets or from house to house be conditioned upon obtaining a license which is subject to the uncontrolled discretion of municipal officials, *Lovell* v. *Griffin,* 303 U. S. 444; *Schneider* v. *State,* 308 U. S. 147; *Largent* v. *Texas,* No. 559 this Term, or upon payment of a license tax for the privilege of so doing. *Murdock* v. *Pennsylvania,* Nos. 480-487 this Term; *Jones* v. *Opelika,* — U. S. —, Nos. 280, 314 and 966, 1941 Term, decided today. Preaching from house to house is an age-old method of proselyting, and it must be remembered that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State, supra,* p. 163.

No doubt there may be relevant considerations which justify considerable regulation of door to door canvassing even for religious purposes,—regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom. And, if a householder does not desire visits from religious canvassers, he can make his wishes known in a suitable fashion. The fact that some regulation may be permissible, however, does not mean that the First Amendment may be abrogated. We are not dealing here with a statute "narrowly drawn to cover the precise situation" that calls for remedial action, *Thornhill* v. *Alabama,* 310 U. S. 88, 105; *Cantwell* v. *Connecticut, supra,* at 311. As construed by the state courts and applied to the case at bar, the Struthers ordinance prohibits door to door canvassing of any kind, no matter what its character and purpose may be, if attended by the distribution of written or printed matter in the form of a circular or pamphlet. I do not believe that this outright prohibition is warranted. As I understand it, the distribution of circulars and pamphlets is a relatively minor aspect of the problem. The primary concern is with the act of canvassing as a source of inconvenience and annoyance to householders. But if the city can prohibit canvassing for the purpose of distributing religious pamphlets, it can also outlaw the door to door solicitations of religious charities, or the activities of the holy mendicant who begs alms from house to house to serve the material wants of his fellowmen and thus obtain spiritual comfort for his own soul.

Prohibition may be more convenient to the law maker, and easier to fashion than a regulatory measure which adequately protects the peace and privacy of the home without suppressing legitimate religious activities. But that does not justify a repressive enact-

ment like the one now before us. Cf. *Schneider* v. *State, supra,* p. 164. Freedom of religion has a higher dignity under the Constitution than municipal or personal convenience. In these days free men have no loftier responsibility than the preservation of that freedom. A nation dedicated to that ideal will not suffer but will prosper in its observance.

Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE join in this opinion.

Mr. Justice FRANKFURTER.

From generation to generation fresh vindication is given to the prophetic wisdom of the framers of the Constitution in casting it in terms so broad that it has adaptable vitality for the drastic changes in our society which they knew to be inevitable, even though they could not foresee them. Thus it has come to be that the transforming consequences resulting from the pervasive industrialization of life find the Commerce Clause appropriate, for instance, for national regulation of an aircraft flight wholly within a single state. Such exertion of power by the national government over what might seem a purely local transaction would, as a matter of abstract law, have been as unimaginable to Marshall as to Jefferson precisely because neither could have foreseen the present conquest of the air by man. But law, whether derived from acts of Congress or the Constitution, is not an abstraction. The Constitution cannot be applied in disregard of the external circumstances in which men live and move and have their being. Therefore neither the First nor the Fourteenth Amendment is to be treated by judges as though it were a mathematical abstraction, an absolute having no relation to the lives of men.

The habits and security of life in sparsely settled rural communities, or even in those few cities which a hundred and fifty years ago had a population of a few thousand, cannot be made the basis of judgment for determining the area of allowable self-protection by present-day industrial communities. The lack of privacy and the hazards to peace of mind and body caused by people living not in individual houses but crowded together in large human beehives, as they so widely do, are facts of modern living which cannot be ignored.

Concededly, the Due Process Clause of the Fourteenth Amendment did not abrogate the power of the states to recognize that homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives in health and safety. Door-knocking and bell-ringing by professed peddlers of things or ideas may therefore be confined within specified hours and otherwise circumscribed so as not to sanctify the rights of these peddlers in disregard of the rights of those within doors. Acknowledgement is also made that the City of Struthers, the particular ordinance of which presents the immediate issue before us, is one of those industrial communities the residents of which have a working day consisting of twenty-four hours, so that for some portions of the city's inhabitants opportunities for sleep and refreshment require during day as well as night whatever peace and quiet is obtainable in a modern industrial town. It is further recognized that the modern multiple residences give opportunities for pseudo-canvassers to ply evil trades—dangers to the community pursued by the few but far-reaching in their success and in the fears they arouse.

The Court's opinion apparently recognizes these factors as legitimate concerns for regulation by those whose business it is to legislate. But it finds, if I interpret correctly what is wanting in explicitness, that instead of aiming at the protection of householders from intrusion upon needed hours of rest or from those plying evil trades, whether pretending the sale of pots and pans or the distribution of leaflets, the ordinance before us merely penalizes the distribution of "literature." To be sure, the prohibition of this ordinance is within a small circle. But it is not our business to require legislatures to extend the area of prohibition or regulation beyond the demands of revealed abuses. And the greatest leeway must be given to the legislative judgment of what those demands are. The right to legislate implies the right to classify. We should not, however unwittingly, slip into the judgment seat of legislatures. I myself cannot say that those in whose keeping is the peace of the City of Struthers and the right of privacy of its home dwellers were not justified, in circumstances of which they may have knowledge and I certainly have not, to single out this class of canvassers as the particular source of mischief. The Court's opinion leaves one in doubt whether prohibition of all bell-ringing and door-knocking would be deemed an infringement of the constitutional protection of speech. It

would be fantastic to suggest that a city has power, in the circumstances of modern urban life, to forbid house-to-house canvassing generally, but that the Constitution prohibits the inclusion in such prohibition of door-to-door vending of phylacteries or rosaries or of any printed matter. If the scope of the Court's opinion, apart from some of its general observations, is that this ordinance is an invidious discrimination against distributors of what is politely called literature, and therefore is deemed an unjustifiable prohibition of freedom of utterance, the decision leaves untouched what are in my view controlling constitutional principles, if I am correct in my understanding of what is held, and I would not be disposed to disagree with such a construction of the ordinance.

Mr. Justice REED, dissenting.

While I appreciate the necessity of watchfulness to avoid abridgments of our freedom of expression, it is impossible for me to discover in this trivial town police regulation a violation of the First Amendment. No ideas are being suppressed. No censorship is involved. The freedom to teach or preach by word or book is unabridged, save only the right to call a householder to the door of his house to receive the summoner's message. I cannot expand this regulation to a violation of the First Amendment.

Freedom to distribute publications is obviously a part of the general freedom guaranteed the expression of ideas by the First Amendment. It is trite to say that this freedom of expression is not unlimited. Obscenity, disloyalty and provocatives do not come within its protection. *Near* v. *Minnesota,* 283 U. S. 712, 716; *Schenck* v. *United States,* 249 U. S. 47, 51; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, 572, 574. All agree that there may be reasonable regulation of the freedom of expression. *Cantwell* v. *Connecticut,* 310 U. S. 296, 304. One cannot throw dodgers "broadcast in the streets." *Schneider* v. *State,* 308 U. S. 147, 161.

The ordinance forbids "any person distributing handbills, circulars or other advertisements to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates . . . to the door" to receive the advertisement. The Court's opinion speaks of prohibitions against the distribution of "literature." The

precise matter distributed appears in the footnote.[1] I do not read the ordinance as prohibiting the distribution of literature nor can I appraise the dodger distributed as falling into that classification. If the ordinance, in my view, did prohibit the distribution of literature, while permitting all other canvassing, I should believe such an ordinance discriminatory. This ordinance is different. The most, it seems to me, that can be or has been read into the ordinance is a prohibition of free distribution of printed matter by summoning inmates to their doors. There are excellent reasons to support a determination of the city council that such distributors may not disturb householders while permitting salesmen and others to call them to the door. Practical experience may well convince the council that irritations arise frequently from this method of advertiseing. The classification is certainly not discriminatory.[2]

If the citizens of Struthers desire to be protected from the annoyance of being called to their doors to receive printed matter, there is to my mind no constitutional provision which forbids their municipal council from modifying the rule that anyone may sound a call for the householder to attend his door. It is the council which is entrusted by the citizens with the power to declare and abate the myriad nuisances which develop in a community. Its determination should not be set aside by this Court unless clearly and patently unconstitutional.

The antiquity and prevalence of colportage are relied on to support the Court's decision. But the practice has persisted because the householder was acquiescent. It can hardly be thought,

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1 "RELIGION as a WORLD REMEDY, The Evidence in Support Thereof. Hear JUDGE RUTHERFORD, Sunday, July 28, 4 P. M., E. S. T. FREE. All Persons of Goodwill Welcome, FREE. Columbus Coliseum, Ohio State Fair Grounds. [on one side]

"'1940's Event of Paramount Importance To YOU! What is it? The THEOCRATIC CONVENTION of JEHOVAH'S WITNESSES. Five Days—July 24-28—Thirty Cities. All Lovers of Righteousness — Welcome! The strange fate threatening all 'Christendom' makes it imperative that you COME and HEAR the public address on RELIGION AS A WORLD REMEDY, The Evidence in Support Thereof, by Judge Rutherford at the COLISEUM of the OHIO STATE FAIR GROUNDS, Columbus, Ohio, Sunday, July 28, at 4 p. m., E. S. T. 'He that hath an ear to hear' will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are [21 are listed]. For detailed information concerning these conventions write WATCHTOWER CONVENTION COMMITTEE, 117 Adams St., Brooklyn, N. Y.'' [one the other side]

2 Keokee Coke Co. *v.* Taylor, 234 U. S. 224; German Alliance Insurance Co. *v.* Kansas, 233 U. S. 389; Hall *v.* Geiger-Jones Co., 242 U. S. 539; Minnesota *v.* Probate Court, 309 U. S. 270; Labor Board *v.* Jones & Laughlin, 301 U. S. 1, 46; Carmichael *v.* Southern Coal Co., 301 U. S. 495, 509, 512.

however, that long indulgence of a practice which many or all citizens have welcomed or tolerated creates a constitutional right to its continuance. Changing conditions have begotten modification by law of many practices once deemed a part of the individual's liberty.

The First Amendment does not compel a pedestrian to pause on the street to listen to the argument supporting another's views of religion or politics. Once the door is opened, the visitor may not insert a foot and insist on a hearing. He certainly may not enter the home. To knock or ring, however, comes close to such invasions.[1] To prohibit such a call leaves open distribution of the notice on the street or at the home without signal to announce its deposit. Such assurance of privacy falls far short of an abridgment of freedom of the press. The ordinance seems a fair adjustment of the privilege of distributors and the rights of householders.

Mr. Justice ROBERTS and Mr. Justice JACKSON join in this dissent.

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